The Byzantine imperial acts to Venice, Pisa and Genoa, 10th - 12th centuries, A Comparative Legal Study

Penna, Dafni

The Byzantine Imperial Acts to Venice, Pisa and Genoa, 10th - 12th Centuries

Research for this project was funded by the *Netherlands Organisation for Scientific Research* (NWO) and the publication of this book was partially financed by the *Stichting Het Groningsch Rechtshistorisch Fonds*.

Published, sold and distributed by Eleven International Publishing
P.O. Box 85576
2508 CG The Hague
The Netherlands
Tel.: +31 70 33 070 33
Fax: +31 70 33 070 30
e-mail: sales@budh.nl
www.elevenpub.com

Sold and distributed in USA and Canada
International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786, USA
Tel.:1-800-944-6190 (toll-free)
Fax: +1 503 280-8832
orders@isbs.com
www.isbs.com

Eleven International Publishing is an imprint of Boom uitgevers Den Haag.

ISBN 978-94-90947-77-4

On the book cover appears a map from the Genadius Library, American School of Classical Studies and a chrysobull of Alexios III Angelos, Patmos, inv. no 76 (Monastic Archive Documents from Mount Athos and Patmos, National Hellenic Research Foundation)

Printed in the Netherlands

RIJKSUNIVERSITEIT GRONINGEN

The Byzantine Imperial Acts to Venice, Pisa and Genoa, 10th - 12th Centuries

A Comparative Legal Study

Proefschrift

ter verkrijging van het doctoraat in de
Rechtsgeleerdheid
aan de Rijksuniversiteit Groningen
op gezag van de
Rector Magnificus, dr. E. Sterken,
in het openbaar te verdedigen op
donderdag 13 september 2012
om 16.15 uur

door

Dafni Penna
geboren op 2 mei 1975
te Athene, Griekenland

Promotores:	Prof. dr. B.H. Stolte Prof. mr. J.H.A. Lokin
Beoordelingscommissie:	Prof. mr. F. Brandsma Prof. dr. P.E. Pieler Prof. dr. C. Pitsakis

To my parents

ACKNOWLEDGEMENTS

Many people have helped me in the writing of this thesis and I would like to express my gratitude to them here. Firstly, I would like to thank Professor Spyros Troianos, who advised me to continue my studies in Byzantine law in Groningen and who has supported me all these years. I am also indebted to Professor Eleutheria Papagianni, who has encouraged me in my studies and has helped me in the early stages of this research. Above all, I would like to thank Professor Bernard H. Stolte for supervising this project, teaching me how to "balance Byzantine law" and for always being willing to assist me with every possible issue that arose during the writing of this book. Further, I wish to thank both Professor Jan H. A. Lokin, my second supervisor, and Professor Frits Brandsma, member of the reading committee (Groningen) for their valuable comments on the manuscript and their constant support, Professor Peter E. Pieler (Vienna) for becoming a member of the manuscript committee and Professor Constantine Pitsakis (Athens) for participating in the manuscript committee and for helping me considerably in the final phase of this thesis. Unless otherwise stated, I am responsible for the translations of the Greek and Latin excerpts. However, these translations would not have been completed without the generous help of both Professor Bernard H. Stolte and Dr. Roos Meijering. I am very grateful to Dr. Shannon McBriar who had the courage to read and re-read this book and edit the English at each stage. Many thanks also to Maike Mioch who helped me with the formatting of the text. Finally, I would like to thank all of the members of the Department of Legal History at the University of Groningen, *de vakgroep Rechtsgeschiedenis*, for supporting me in every way not only in learning and writing, but also with my teaching.

Groningen has become my Ithaca.

Σὰ βγεῖς στὸν πηγαιμὸ γιὰ τὴν Ἰθάκη,
νὰ εὔχεσαι νἆναι μακρύς ὁ δρόμος,
γεμάτος περιπέτειες, γεμάτος γνώσεις.
Τοὺς Λαιστρυγόνας καὶ τοὺς Κύκλωπας,
τὸν θυμωμένο Ποσειδῶνα μὴ φοβᾶσαι,
τέτοια στὸν δρόμο σου ποτέ σου δὲν θὰ βρεῖς,
ἂν μέν' ἡ σκέψις σου ὑψηλή, ἂν ἐκλεκτὴ
συγκίνησις τὸ πνεῦμα καὶ τὸ σῶμα σου ἀγγίζει.
[...]
Ἡ Ἰθάκη σ' ἔδωσε τ' ὡραῖο ταξεῖδι.
Χωρὶς αὐτὴν δὲν θἄβγαινες στὸν δρόμο.

As you set out on your journey to Ithaca,
hope that the road is a long one,
full of adventures, full of knowledge.
The Laestrygonians and the Cyclops,
the angry Poseidon do not fear
such, on your way, you will never find
if your thoughts remain lofty, if a fine
emotion touches your spirit and your body.
[...]
Ithaca gave you the beautiful journey.
Without her you'd not have set upon the
road.

From the poem *Ithaca* by Constantine P. Cavafy (1911)

"...τοιοῦτον γὰρ τὸ Λατίνων ἅπαν γένος ἐρασιχρήματόν τε καὶ ὀβολοῦ ἑνὸς πιπράσκειν εἰωθὸς καὶ αὐτὰ δὴ τὰ φίλτατα..."

"...because this whole nation of the Latins is very fond of money and quite accustomed to selling even what is dearest to them for one penny..."

Anna Komnene (1083-1153/54), *Alexias*, 6,6,4

CONTENTS

ABBREVIATIONS[1]

AJC	Bluhme and Kearly, Annotated Justinian Code
B.	Scheltema / Holwerda / van der Wal Basilicorum libri LX
BS	B., Series B: Scholia
BT	B., Series A: Textus
Byz.For.	Byzantinische Forschungen
BZ	Byzantinische Zeitschrift
Cod. Dipl. Genova	Codice Diplomatico Genova
C.	Codex Justinianus
D.	Digest
CSHB	Corpus scriptorum historiae byzantinae
DOP	Dumbarton Oaks Papers
EHB	The Economic History of Byzantium
Eis.	Eisagoge
FM	Fontes Minores
JGR	Ius Graecoromanum
MM	Miklosich and Müller, Acta Diplomata
Nov.	Novel
ODB	The Oxford Dictionary of Byzantium
Reg.	Regesten number, Dölger
SG	Subseciva Groningana
TTh	Tafel and Thomas, Urkunden

[1] For complete citations, see Bibliography.

CHAPTER I

1. Introduction

Many acts from the 10th, 11th and 12th centuries have been preserved that document the relations between the Eastern Roman Empire, also known as Byzantium, and the Italian city-states of Venice, Pisa and Genoa. These Italian maritime republics managed to gain commercial and financial privileges from the Byzantine emperors and thus played an important role in the Mediterranean world, one that would expand in the later Middle Ages. While the Byzantine imperial acts granted to these three Italian cities have been studied in the past in relation to their commercial context, they have not, until now, been studied systematically in relation to their legal content. This book attempts to examine the Byzantine imperial acts directed at the city-republics of Venice, Pisa and Genoa in the 10th, 11th and 12th centuries and investigate the legal issues arising from them. This research begins with the year 992, when the first preserved privilege act was issued in favour of Venice,[2] and ends with the year 1204, a boundary mark in the history of Byzantium since the Byzantine Empire then fell to the Latins who sacked Constantinople.[3]

It is well known that by these acts the Byzantine emperors granted commercial privileges to these Italian cities, but the question arises as to whether the emperors also granted legal privileges by these acts; and if so, whether some Italian cities were more privileged than others in respect of legal matters. There is no doubt that commercial relations were strong between Byzantium and the Italian city-states and there is also evidence of cultural interaction between both parties, but little is known about the legal background of these relations. In other words, what is the legal information that these acts provide and which is the applicable law? Did both their territories have law in common and if so, of what does it consist? Is Roman law assumed to be binding in these acts as part of that law that was common, and if so, in which cases and what are the examples given? Investigating this final question, namely whether there was already a common legal understanding in Europe before the 11th century and how it was actually formed, may contribute to an explanation of why Justinian's law became prominent in the West in the 11th century and how it was applied in different parts of Europe.

It is necessary here to briefly sketch out the development of Roman law up to the 11th century in the Eastern and Western parts of Europe. In the 3rd century, the emperor Diocletian divided the Roman Empire into an Eastern and a Western part. The Eastern Roman Empire, what is known today as

[2] Reg. 781, see chapter II,1.

[3] From 1204 to 1261 most of the Byzantine Empire was divided among rulers from Western Europe, the so-called Latin rulers, and we speak of a Latin Empire as existing in that time. However, during the period 1204-1261 Greek successor states did exist. See *ODB*, vol. 1, pp. 356-58.

Byzantium, lasted for approximately 1000 years and covered most of today's South-Eastern part of Europe. A boundary mark in the history of Byzantium was the legislation of emperor Justinian in the 6th century: under his reign the codification of Roman law was achieved, which was to remain the legislative bedrock of the Byzantine Empire and lasted even after its fall. The continuity of Roman law was therefore firmly established for the Eastern part of Europe. This legislation had yet to become the basis for many European legal texts when it was 'rediscovered' in the 11th century in Italy and subsequently spread through Western Europe as an authoritative source of rules.[4] Therefore, examining the legal information of the Byzantine acts from the 10th, 11th and 12th centuries that are related to Italy will enable us to determine to what extent the ground had already been prepared for this legislation by the increasing role of the Byzantine-Italian relations and the part played by Roman law in them.

This book is divided into five chapters, as follows. The first chapter includes general information about the legal traditions of Venice, Pisa and Genoa up to 1204 and some general remarks about the examined acts. In the second, third and fourth chapters, the acts directed at Venice, Pisa and Genoa have been examined in detail and in chronological order with regard to the legal issues that arise in them. In the fifth chapter however, a comparative analysis of common legal issues in these acts has been made. Such issues deal with grants of immovable property, justice, maritime law, shipwreck and salvage provisions and finally, oaths. These legal issues are compared with other Byzantine or Western sources. If, for example, a grant of immovable property appears in an act of Venice, it is not only described in full in chapter II, but is compared with other grants of immovable property that I have come across in the Byzantine acts for Pisa and Genoa in chapter V. With regard to granting immovable property especially, the legal terminology is problematic; therefore I will use the expressions "grants of immovable property" and "granting immovable property". In chapter V,2 I will explain what is actually being granted to the Italians in respect of the immovable properties in Constantinople. Should a legal issue arise in only one act, it is thoroughly examined in that place.[5] In the appendix, the legal part of the chrysobull of Alexios III Angelos in 1198[6] has been translated because this is the only chrysobull which includes such detailed legal provisions. Finally, in the appendix a table with an overview of all the Byzantine imperial acts that have been examined has been made, including the year in which the act was issued, the name of the emperor and the registration number assigned by F. Dölger.[7]

[4] On the rediscovery of Roman law in the Middle Ages and about the role of Roman law in general in Europe, see, for example, Koschaker, *Europa und das Römische Recht*; Berman, *Law and Revolution*; Stein, *Roman Law* and Caenegem, *Historical Introduction*.

[5] For example, the deposit in the chrysobull of Isaac II Angelos in 1193 (Reg. 1616), see chapter IV,6.

[6] Reg. 1647.

[7] Dölger, *Regesten*.

Some preliminary remarks regarding the legal systems in the Middle Ages in Europe and the differences between East and West also seem necessary here.[8] A first clear difference between East and West was the continuity of Roman law in Byzantium. Byzantium was never isolated from Roman law.[9] As is well known, most of the legislation of Justinian was issued in Latin, although his empire was mostly inhabited by a Greek-speaking population.[10] It was therefore difficult for his legislation to be understood and applied, and hence shortly after its promulgation, texts appeared in Greek that translated parts of that codification, commented upon or summarized it. This actually marks the beginning of Byzantine law.[11] Whereas the continuity of Roman law in the Eastern world was never in question, in the Western part, there are some doubts about this continuity between the 6th and 11th centuries. During that period, the so-called barbarian codes, in addition to local and customary law were mainly applied in the Western part of Europe.[12] These barbarian codes included the so-called 'Roman vulgar law' which did not reflect the Roman law of the classical period but that of the 5th century.[13] In this period, the personal principle prevailed, which meant that the Germanic tribes applied Germanic law, which was mainly customary law, only to their Germanic subjects, whereas 'Roman vulgar law' was applied to their Roman subjects.[14] Gradually however, as populations mixed, the territorial principle was applied, which meant that people living in a certain area were subject to the same law.[15] Moreover from the 8th century on, systems of feudal law began to develop in the West that were based on a personal bond between a lord and a vassal and were therefore important in the law of real property.[16]

The diverse development of Roman law in East and West was not the only difference between the Eastern and Western world. A second important difference was without doubt the language, which divided the worlds into East, where Greek was dominant, and West, where Latin was used**.** Given the differences between East and West with regard to their legal tradition and language, the main question is how the two parties in our documents could

[8] The standard book on Roman law in the Middle Ages remains Savigny's *Geschichte*, which has also been translated into English by Cathcart. On this topic, see also, for example, Cortese, *Il diritto*, who provides further bibliography, Calasso, *Medio Evo*, Paradisi, *Storia*. About Italian law, see, for example, Leicht, *Storia* and Besta' works (see bibliography provided by Cortese cit. above).

[9] See Stolte, *Byzantine Law*, pp. 111-126.

[10] The reason that Justinian issued his codification in Latin is related to his attempt to restore the *imperium Romanum*. See Troianos, *Piges*, p. 40-43, Lokin, *Prota*, p. 1-2 and Mousourakis, *Roman Law*, p. 423.

[11] Stolte, *Byzantine Law*, especially pp. 115-116.

[12] See Hazeltine, *Roman Law and Canon Law*, pp. 721ff.

[13] See Stein, *Roman Law*, p. 33.

[14] Stein, *Roman Law*, p. 39; Caenegem, *Historical Introduction*, pp. 17ff.

[15] Stein, *Roman Law*, p. 39.

[16] Caenegem, *Historical Introduction,* p. 20. On the term of feudalism, see Ganshof, *Feudalism*.

understand each other. While the problem of language was partly solved by interpreters and the translation of texts, as we will see further on,[17] the main issue remained as to whether the two parties could achieve a mutual understanding of the legal issues that arose in these acts. The documents and the form in which they appeared had to be understood by each party. There must have been a common basis for negotiation and understanding and, as I will attempt to show in this book, these treaties played a prominent role in forming that common base for legal issues between the Eastern and Western parts of medieval Europe.

Finally, another factor becomes apparent when sketching out the elements of the legal systems in the Middle Ages and the legal background in the East and in the West in the 10th, 11th and 12th centuries. This was also the time of the Crusades and the newly established Kingdoms had good contacts with all three Italian cities, Venice, Pisa and Genoa. The three cities were granted important privileges by the Crusader kings. In that respect, the privilege charters of the Crusader kings share similarities with the privilege acts of the Byzantine emperors.[18] The age of the Crusades was also marked by the rise of commerce in the Mediterranean, and during this period a legal renaissance took place in Italy.[19] While it is true that the legal revival in Italy in the 11th century is connected to the 'rediscovery' of the *Digest* and its thorough study and application, the commercial activity of this period and its increase through the Crusades developed the conditions that enabled a fruitful second life for Roman law. The rise of commerce created legal issues that required legal answers and in this, the role of the merchants was important. As they travelled and expanded their business, legal issues arose: What happened to their goods in case of a shipwreck? What happened to their estate when they died in another land? Who then had the right of inheritance? Did they have the right to own property in another land? If property was granted to them by an authority, what was the legal procedure of such grants? Who were the competent legal authorities to judge them in another land and what was the applicable law? Did they have the right to use their own judges and law? Legal issues that were regulated in the privilege charters of the Crusader kings were also regulated in the Byzantine imperial privileges granted to the Italian cities.[20] In other words, similar legal problems led to similar solutions. For this reason, in the last chapter a comparison of the legal issues encountered in the Byzantine acts is made with the legal issues included in the privilege acts of the Crusader kings.

[17] See in chapter I,3.

[18] See chapter V and the comparison that is made between different legal issues, such as grants of immovable property in 2.6, matters of justice in 3.2 etc.

[19] See Hazeltine, *Roman Law and Canon Law*, p. 697.

[20] See Prawer, *Crusader Institutions*, p. 244 and Laiou, *Byzantine Trade*, pp. 180-87, especially pp. 186-87.

2. Venice, Pisa and Genoa: general information about their legal traditions up to 1204[21]

As I have explained in the introduction, we speak of the 'rediscovery' of Roman law that took place in Italy at the end of the 11th century. Yet it is important to stress that in Italy, Roman law was never totally abandoned.[22] A large part of Italy was reconquered during the reign of Justinian and his codification covered that part also. Fragments of his codification therefore survived in Italy. Actually, in the Lombard towns of northern Italy, texts of Roman law never entirely disappeared, though the *Digest* was gradually forgotten.

The law that the Venetians applied is obviously a mirror of their history, in that Venetian law was influenced by Roman, Byzantine, Germanic (Lombardian, Frankish) and Canon law that were permeated by or filtered through the local law.[23] Every doge had to take an oath of investiture at his appointment, the so-called *promissio*. Heller's comparison of the doge's *promissio* to the *praetor*'s edict in Roman law is interesting:[24] just as at the beginning of his year of office the new *praetor* introduced the law based on the edict of the last *praetor*, when the doge received his office, he swore a new *promissio* that was based mainly on the *promissio* of the last doge. Byzantine influences can be seen in Venetian rules of criminal law, especially older ones.[25] Lombardian influences derive, for example, from the *edict* of king Rothari, which was edited in 643.[26] Frankish influence is also seen in early provisions of Venetian criminal law. It seems that rules of the *Lex Salica* were also used in Venetian law.[27] Moreover Germanic legal terms such as *allodium*, *morgengab*, *vadia*, and *wiffa* were used in Venice.[28] In a decree of doge Pietro Candiano in 960, reference is made to the "auctoritas sacrorum canonum".[29] All of these influences, as Kretschmayr points out, are filtered by the local use of the law, the *usus patriae* that was formed partly by tradition and customs and partly by written legal decisions.[30]

---

[21] The aim of this part, as the title implies, is to give only some very general information about the legal traditions of these cities. For the history of Italian law, see, for example, Leicht, *Storia*, and Besta's works (see Cortese, *Il diritto*, who provides further references on the matter).

[22] See Rashdall, *Bologna*, pp. 99ff.; Berman, *Law and Revolution*, p. 53; Stein, *Roman Law*, pp. 39-41; Hazeltine, *Roman Law and Canon Law*, pp. 729ff.

[23] Kretschmayr, *Geschichte*, p. 190.

[24] Heller, *Venedig*, p. 823.

[25] Besta, *Il diritto*, p. 18, footnote 3 and Kretschmayr, *Geschichte*, p. 191.

[26] Kretschmayer, *Geschichte*, p. 191. On Lombard law in general, see Leicht, *Storia*, 48-65, about the edict of Rothari especially in pp. 49-50.

[27] In the *Chronicon Venetum* it is mentioned: "(Veneti) de Romana autem sive Salica traxerunt legem", see Besta, *Il diritto*, p. 19 and Kretschmayer, *Geschichte*, p. 191.

[28] Besta, *Il diritto*, p. 18 and Kretschmayr, *Geschichte*, p. 191

[29] Kretschmayr, *Geschichte*, p. 191.

[30] Besta, *Il diritto*, pp. 21ff. and Kretschmayr, *Geschichte*, p. 191.

At the time from which our documents date (10th, 11th and 12th centuries) Venice had reached a sophisticated level of law and justice. In 1195 doge Enrico Dandolo lodged a codification plan for Venice which was not surprising considering the legal history of Venice. Throughout the decade before Dandolo held the office of the doge, the commune had been organizing its governmental structure and important collections of legal texts had already been issued. The doges Domenico Morosini (1148-1155) and Vitale II Michiel (1155-1172) had both issued regulations on matters of legal procedure.[31] Furthermore, in 1173 doge Sebastiano Ziani issued a law regulating matters of the market and the trade of products. According to this law, special officials (the *iusticiarii*) had to supervise the prices of certain products and the functioning of the market.[32] Provisions were included in this law about the trade of wine, grain and corn, fruits, bread, meat, olive oil, birds and fish. The work of doge Orio Malipiero in the field of legislation is also considerable. In 1181 he issued the first systematic criminal regulation (*promissio maleficiorum*) for Rialto and probably the districts around it;[33] this regulation was later amended by Enrico Dandolo. In the *promissio maleficiorum* of 1181, which is one of the oldest criminal law statutes of Italy, one can see, as Kretschmayr points out, the Roman-Byzantine and Germanic (Frankish-Lombardian) influences in the way the punishments were devised.[34] Based on these and other works, in April 1195 the ambitious doge Enrico Dandolo issued a statute for Rialto and the surrounding district, including civil law provisions; this statute was revised and amended by his son Renier Dandolo in September 1204 and this text can be considered the first civil code of Venice.[35] The statute of 1195 consists of law of procedure, family law, law of succession and property law, as well as law of obligations and commercial law. In all these legal areas one can see a mixture of Roman, Byzantine, Germanic and Canon law; however, the strongest legal element remains Roman law.[36] Hence, at the end of the 12th century, the Venetian authorities were busy drafting the first civil code of the city. At that time, Venice was at a high point of legislative preparation and this fact is worth taking into account when examining the Byzantine imperial acts directed at Venice, especially those dating from the end of the 12th century. It is surely not a coincidence that the chrysobull of 1198, the last preserved

[31] Kretschmayr, *Geschichte*, p. 342.
[32] Kretschmayr, *Geschichte*, p. 369. The role of the *iusticiarii* reminds us strongly of the role of the prefect (ἔπαρχος) in Constantinople, whereas this law resembles the *Prefect's Book* in Byzantine law, which is dated from the 10th century.
[33] Kretschmayr, *Geschichte*, p. 342. The text is published in Kretschmayr, *Geschichte*, pp. 494-497; see also the German translation by Hörmann in Dumler, *Venedig*, pp. 132-35.
[34] Kretschmayr, *Geschichte*, pp. 342-43.
[35] Kretschmayr, *Geschichte*, p. 342. These codes have been edited by Besta and Predelli, *Gli statuti*. Further codifications of civil law were made in 1214 and 1226 under the reign of doge Pietro Ziani and in 1242 under doge Jacopo Tiepolo; see Heller, *Venedig*, p. 339.
[36] Kretschmayr, *Geschichte*, p. 345; Leicht, *Storia*, p. 208.

chrysobull in favour of Venice, is full of legal provisions at the request of the Venetians themselves, as we will later see when examining that chrysobull.[37]

In the case of Pisa, it is evident that the Pisans were interested very early on in having a solid and well defined system of law with a classification of corresponding norms. This can be concluded from their early code activity and the way they determined the application of statutes and customs. Both *lex* and *usus* were important in Pisa and it seems they were valued equally in that there were special judges for applying each one and that two codes were made: one including the statutes and one consisting of customs. Moreover, as Classen points out, there were two categories of lawyers, often called *sapientes*, some of whom were trained in Roman law and others specialised in customary law.[38] The importance of customs in Pisa can be seen, for example, in a treaty from 1081, in which the Western emperor Henry IV recognised Pisan customs in matters regarding the sea.[39] This demonstrates that the Pisans had already developed such strong and effective customs in maritime matters that an emperor recognised their value in writing and allowed the Pisans to apply them. The distinction between statutes and custom can also be seen in two important codes that had already been issued in Pisa in 1160: the *constitutum legis*, a collection of written laws and the *constitutum usus*, a collection of customs.[40] The prologue of the *constitutum usus* mentions that Pisa was traditionally under Roman law, but also maintained Lombard law in some court cases and that customs were also applied.[41] Classen mentions that the *constitutum legis* was also influenced by Roman law, namely the *Codex* of Justinian and the *Digest*, but substantial parts of it derived from Lombard law.[42] This *constitutum legis* regulated the law of civil procedure and family law, as well as succession law and similar matters. The *constitutum usus* regulated, amongst other things, matters of procedure and of commercial and maritime law. As

[37] See chapter II,7.

[38] Classen, *Studium*, p. 83. The work of d' Amia who has collected and edited decisions of Pisan courts from 1141 to 1200 is helpful. See D' Amia, *Diritto*.

[39] "Et consuetudines quas habent de mari sic eis obsevabimus sicut illorum est consuetudo, et illum super quem reclamatio venerit de terra, si guarentem habere potuerit vel possessionem per legem iurare voluerit, per pugnam fatigari non sinemus..." in Rossetti, *Pisa*, pp. 165-66.

[40] Salvatori, *Pisa*, p. 20.

[41] "Pisana itaque civitas a multis retro temporibus vivendo lege Romana, retentis quibusdam de lege Longobarda sud iudicio legis, propter conversationem diversarum gentium per diversas mundi partes suas consuetudines non scriptas habere meruit, super quas annuatim iudices posuit, quos previsores appellavit, ut ex equitate pro salute iustitie et honore et salvamento civitatis tam civibus quam advenis et peregrinis et omnibus universaliter in consuetudinibus previderent…" in Classen, *Studium*, p. 94; the author in this book has edited *inter alia* the prologue of the *constitutum usus*; see also Storti Storchi., *Costituti*, pp. 33 ff.

[42] Classen, *Studium*, pp. 84-86. The author adds that it seems highly possible that the Pisan jurists consulted the manuscript of the *Digest*, which was in Pisa at that time.

Classen stresses, both texts together formed a complete system of civil law.[43] Hence, codification began early in Pisa, since the aforementioned *constituta* were the result of the work of committees that had already begun collecting and examining the material in 1156. Pisan law is thus a mixture of Roman, Lombard and customary law. In short, from early on the Pisans were interested in creating a complete, well-organised system of law by making laws (the above *constituta*) on the one hand, and by making the right conditions for the application of these laws on the other, which they did by establishing courts and appointing judges experienced in corresponding laws.

Around 1099 the Genoese established a *compagna* (a sort of voluntary commune, a sworn association of citizens) consisting of citizens who swore an oath to uphold certain rights and duties. The city was governed by the consuls.[44] Information about the establishment of the first *compagna* is given by the best known Genoese chronicler, Caffaro. A text of the consuls from 1143 is preserved, in which a long oath which the consuls of the city had to swear is recorded. The oath described their duties and functions. Within this text, it is stated that the *consuls* have to observe the treaties concluded with the Byzantine emperors.[45] In other words, these treaties were considered so important for the Genoese that a clause to observe such treaties was included in the text that the consuls were required to swear at their appointment.[46]

In Genoa, we do not encounter information about a codification until at least 1204. However, many documents have been preserved that deal with legal matters. It seems that legislation was not collected in a single text, but rather legislative provisions were distributed over many documents, such as those containing the oaths of the consuls and the *compagna*. Thus, for example, in a document from 1157, which also contains an oath the members of the *compagna* had to swear, provisions are included that regulate legal procedure and, in particular, matters of evidential fraud. These documents indicate that in the law of procedure, corruption seemed to be a problem. Most of the provisions regulated matters of false witnesses and forgery, and severe penalties were introduced for all wrongdoers, including notaries who committed fraud. Moreover, as time passed, even more severe penalties were introduced for these crimes, a fact that implies that the problem persisted despite the measures taken. What is important to note is that a developed system of arbitration seems to have been applied by the Genoese, who

[43] Classen, *Studium*, p. 84.

[44] See Epstein, *Genoa*, p. 33.

[45] "Conventiones illas inter imperatorem Constantinopolitanum et Ianuenses, quas legati fecerunt aut fecerint, quas consules de Communi, qui modo sunt, scriptas et determinatas nobis dederint adimplebimus, ita determinatim ut eas per scriptum nobis dederint…" in *Cod. Dipl. Genova*, vol. I, p. 166, lines 6-9, no 128.

[46] See the observation by Day who states that "Such a clause, the only mention of diplomatic affairs in the whole document, highlighted both the seriousness that the Genoese placed on relations with East Rome and their lack of interest in relations with other foreign powers". See Day, *Genoa's Response*, p. 24.

preferred in general to mediate their disputes instead of litigating them. In this document from 1157, it is also mentioned that the members should observe the treaty the consuls had made with the Byzantine imperial envoy, Demetrios Makrembolites.[47]

Finally, an important source for the legal history of Genoa in the 12th century is the cartulary of notary Giovanni Scriba. This collection consists of 1,306 acts written by this notary in Latin from 1154-66. Despite the fact that there are substantial gaps in the records, this archive is important since it includes documents containing sales, loans, wills, contracts and forms of sea loans, etc. Moreover, it is the oldest cartulary of a notary in Europe and as such, offers evidence on how legal documents in the 12th century were drawn up, registered and kept.[48] It is worth mentioning that, from his will, we learn that Scriba had a copy of Justinian's *Institutes* in his possession.

[47] "Ego observabo conventum imperatoris sicuti consules fecerunt cum Demetrio Macropolita legato imperatoris, et si fuero emendator brevium non auferam istud capitulum de brevi Compagne…" in *Cod. Dipl. Genova*, vol. I, p. 359, lines 3-6, no 285. An agreement is preserved between Demetrios Makrembolites [also mentioned in sources as Macropolitas or Metropolitis] acting in the name of the Byzantine emperor and the Genoese dated 12 October 1155. This document regarding the Italian cities is the only one of this kind that survived regarding the Italian cities and it seems that it was something like a preliminary act for an imperial act. About this agreement between Makrembolites and the Genoese, see Day, *Manuel*, pp. 289-301, especially pp. 292ff. See also Reg. 1402 about this mission of Makrembolites in Dölger, *Regesten*, p. 224.

[48] Epstein, *Genoa*, p. 55.

3. General remarks about the acts

The examined material consists of all the preserved Byzantine imperial acts directed at Venice, Pisa and Genoa from 992[49] up to 1204. In total, there are ten preserved Byzantine imperial privilege acts in favour of Venice,[50] three in favour of Pisa[51] and five in favour of Genoa[52] but there are also indirect references to other acts as well.[53] There are also two imperial letters referring to Pisa[54] and six to Genoa.[55] In addition, there is one decree (πρόσταγμα) addressed to Byzantine officials regarding matters of Genoa.[56] All acts referring to Venice have, unfortunately, been preserved only in a Latin translation, whereas most of the acts referring to Pisa and Genoa have been preserved both in a Greek text[57] and a Latin translation. The Byzantine imperial acts directed at Venice have recently been edited by M. Pozza and G. Ravegnani and this is the edition that I have used for most of the acts directed at Venice.[58] For only two chrysobulls referring to Venice two different editions have been used because they provide a detailed critical apparatus: for the chrysobull of 992 directed at Venice, I have used the edition of A. Pertusi[59] and for the chrysobull of 1082 in favour of Venice, I have used the edition of S. Borsari.[60] For all the acts directed at Pisa, I have used the edition of G. Müller for the Greek texts and the Latin translations.[61] For the acts referring to Genoa, I have used the edition of F. Miklosich and J. Müller for the preserved Greek texts[62] and the edition of C.I. di Sant' Angelo[63] for the Latin translations of the texts, with the exception of two acts, for which I have used the edition of G. Bertolotto and A. Sanguinetti[64] because these two acts are not included in the edition of C.I. di Sant' Angelo. Another valuable but lesser known resource is a critical edition in the unpublished thesis by Chr. Gastgeber, which includes all Byzantine imperial

[49] As I have explained in the Introduction, I take this date as a starting point this date because the first preserved privilege act was issued then; this is the act for Venice Reg. 781.
[50] Reg. 781, Reg. 1081, Reg. 1304, Reg. 1365, Reg. 1373, Reg. 1576, Reg. 1577, Reg. 1578, Reg. 1590 and Reg. 1647.
[51] Reg. 1255, Reg. 1499[1400] and Reg. 1607.
[52] Reg. 1488, Reg. 1497, Reg. 1498, Reg. 1609 and Reg. 1616.
[53] For Venice, see, for example, Reg. 1305 and Reg. 1589.
[54] Reg. 1618 and Reg. 1651.
[55] Reg. 1582, Reg. 1606, Reg. 1610, Reg. 1612, Reg. 1649 and Reg. 1660.
[56] Reg. 1661a.
[57] In most of the cases it is a copy of the original Greek text.
[58] Pozza and Ravegnani, *I trattati*.
[59] Reg. 781, Pertusi, *Venezia e Bisanzio (Saggi)*, pp. 102-107.
[60] Reg. 1081, Borsari, *Il crisobullo*, pp. 124-131.
[61] Müller, *Documenti*.
[62] *MM*, vol. 3.
[63] *Cod. Dipl. Genova*.
[64] *Nuova Seria*. These two acts are a letter addressed to a Genoese knight in 1201 (Reg. 1660) and a decree regarding Genoa addressed to three Byzantine officials in 1201 (Reg. 1661a [1663]).

acts directed at Venice, Pisa and Genoa during the reign of the Komnenian and Angelos dynasties, preserved in Greek and their Latin translations.[65] In the last volume of this thesis summaries of these acts are provided, which include information regarding their transmission and past editions as well as commentary.

All preserved privilege acts are in the type of chrysobulls, which have this name because they bore the emperor's golden bull.[66] In the documents in Greek, the terms "χρυσόβουλλος λόγος", "χρυσόβουλλον σύμφωνον", "χρυσόβουλλον σιγίλλιον" are used, and in Latin we come across the terms *chrysobullon*, *chrysobulus sermo*, *chrysobulum verbum*, *crisobolum logo*, *aureae bullae sigillum*, *chrysobullon sigilion* or similar terms.[67] The fact that a privilege act, a chrysobull, was sometimes used by the Byzantine emperors as an act of foreign policy, namely a treaty, is something well known; this has been studied by Dölger and Karayannopulos in their work on Byzantine diplomacy, which is still the definitive work on this topic.[68] Hence, although the examined acts are, in essence, treaties they also have the type of a chrysobull. Why the Byzantine emperors chose to issue the treaty as a chrysobull has to do, as Dölger and Karayannopulos have suggested, with the political theory of the Byzantines. In the eyes of the Byzantines, a treaty was a privilege act because it was a gesture of the emperor's good will since the emperor allowed such an act to foreign rulers.[69] Burgmann states that, in so far as these treaties are recorded in a chrysobull, they are considered and styled as an act of good will of the emperor.[70] Burgmann, with whom I agree, takes his argument a step further suggesting that these treaties go so far as to imply that the receivers are considered subjects of the Byzantine emperors, even if that is not the case.[71] After all, the Byzantines considered themselves as being the ultimate authority in the world. In the first acts towards Venice especially, expressions are used by which the emperors emphasize that these acts were issued because of their

[65] Gastgeber, *Übersetzungsabteilung*.

[66] On the term chrysobull, see *ODB*, vol. 1, pp. 451-452. There are also some indirect references about a decree (*praeceptum*) of John II Komnenos in 1126 in favour of Venice (Reg. 1305).

[67] For example, the chrysobull of Manuel I Komnenos to Pisa in 1170 (Reg. 1499[1400]) has the type of a chrysobull *sigilion*, as well as the act of the same emperor in the same year directed at Genoa (Reg. 1497). For the distinction of these terms, see Dölger and Karayannopulos, *Urkundenlehre,* pp. 117ff.; See also Müller, *Documents, Imperial*, pp. 129-135.

[68] Dölger and Karayannopulos, *Urkundenlehre*, p. 25 with footnote 3 and pp. 94ff.

[69] Dölger and Karayannopulos, *Urkundenlehre*, p. 95. See also Heinemeyer, *Die Verträge*, pp. 133-134 with footnotes.

[70] Burgmann, *Chrysobull*, pp. 78-79. See also Laiou, *The emperor's word*, pp. 347-362, especially p. 357.

[71] See Burgmann, *Chrysobull*, p. 79.

generosity and because the Venetians are true and loyal to the empire.[72] Here it must also be emphasized that Venice had a special relationship with Byzantium and had a closer bond with the empire than the other Italian cities.[73] Venice was the first Italian city to receive a chrysobull from the Byzantine emperors and this rather early, in 992,[74] whereas Pisa received its first Byzantine privilege act in 1111[75] and Genoa only in 1169.[76] Moreover, if one compares the total number of privilege acts for Venice with those for Pisa and Genoa, one sees that Venice profits considerably. A question raised by scholars is whether the acts for Venice in particular can be considered as two-sided treaties. Heinemeyer suggests that there is some doubt whether these acts regarding Venice can be considered as two-sided treaties at least in the 10th and 11th centuries, and concludes that the chrysobulls of 992[77] and 1082[78] in favour of Venice contain elements of imperial privileges.[79] As Neumann has suggested, the first chrysobull for Venice that includes obligations for Byzantium is the chrysobull of Isaac II Angelos from 1187.[80] Indeed this chrysobull is the first privilege act for Venice that includes detailed provisions and obligations for both sides and is clearly a two-sided treaty.[81] The whole question on the type and form of these acts is also connected, as Heinemeyer has suggested, with the way in which these acts, these treaties were made;[82] however, the aim of this book is neither the analysis of how these treaties were made nor the diplomatic study of these acts.[83]

Another issue concerns the language of these acts. As I have previously mentioned, no original act in Greek has been preserved for Venice. We only have Latin translations of the acts, the manuscripts of which can be found

[72] See for example, the first and second preserved chrysobulls to Venice, that is Reg. 781 in Pertusi, *Saggi Veneto-Bizantini*, p. 103, lines 1-7 and Reg. 1081 in Borsari, *Il crisobullo*, pp. 124-25 (version A), lines 1-20.

[73] For the political and diplomatic relations between Venice and Byzantium, see Nicol, *Byzantium and Venice*. A characteristic example of the close relations between Venice and Byzantium is the fact that honorary Byzantine titles are granted only to Venetians and not to other Italians by these acts. For example, by the chrysobull of Alexios I Komnenos in 1082 (Reg. 1081) the doge receives the title of *protosebastos* and the patriarch of Grado the title of *hypertimos*, see the examination of Reg. 1081 in chapter II, 2.

[74] Reg. 781.

[75] Reg. 1255.

[76] Reg. 1488.

[77] Reg. 781.

[78] Reg. 1081.

[79] See Heinemeyer, *Die Verträge*, pp. 81ff., especially p. 87 and his conclusion on p. 157.

[80] Reg. 1578. See Neumann, *Quellen*, p. 368.

[81] For the provisions included see Lilie, *Handel und Politik*, pp. 24ff. For the legal issues of this document see further on under the examination of this act (Reg. 1578) in chapter II, 5.

[82] Heinemeyer, *Die Verträge*, pp. 79-161. See on this chapter V,5.

[83] These issues have been sufficiently studied in the past, see for example Heinemeyer, *Die Verträge*. See also Gastgeber, *Übersetzungsabteilung*.

today in the state archives of Venice.[84] Some acts directed at Pisa and Genoa have been preserved in their original form with their Latin translations. The acts of Pisa can be found today in the state archives of Florence and of Pisa, whereas the acts of Genoa have been preserved in the state archives of Genoa.[85] Many of these privilege acts have been preserved as a result of having been inserted in some other privilege act. For example, the chrysobulls of Alexios I Komnenos in 1111[86] and of Manuel I Komnenos in 1170[87] have been preserved because they were incorporated into the chrysobull of Isaac II Angelos in 1192,[88] of which the original act in Greek has fortunately survived and is kept today in the state archives of Florence. The Byzantine emperors issued the original act in Greek in two copies: one copy was to be kept in the Byzantine offices, whereas the other was given to the Italians to take home as evidence of the emperor's grants. This explains why today we find original Byzantine imperial acts in Greek in Italian archives since, as is well known, no archives in Constantinople have been preserved. The fact that the acts which the Italians carried home with them were also original acts of the emperor is proved by the external characteristics of the type of a chrysobull: for example, the imperial red ink on the document.[89] However, the Byzantine officers also prepared a translation of the document in Latin, so that the Italians could understand what the Greek document included; this Latin translation was also given to the Italians.[90] In reading the Latin, it is evident that it is a translated text, and in most cases, the Latin is difficult to understand.[91] In the examined material, Greek words, such as *symphonia* or *philotimia* are often included in the Latin translations, but I will refer to such examples in the examination of each act. In some cases, one can easily see that the translation is a literal one and that the translator probably relied on lists of words, something like a lexicon, which he automatically included in the Latin translation. A characteristic example can be found in the chrysobull of Alexios III Angelos to Venice in 1198,[92] where we read:

[84] See Neumann, *Quellen*, pp. 366-378; on p. 367 the author refers to the history of these copies.
[85] The *sigilion* for the Genoese Guglielmo (Reg. 1660) is today in the Archivio della Società Ligure di Storia Patria.
[86] Reg. 1255.
[87] Reg. 1499[1400].
[88] Reg. 1607.
[89] See, for example, the description of Reg. 1607 in Dölger, *Regesten*. On the characteristics of the chrysobulls, see Dölger and Karayannopulos, *Urkundenlehre*, pp. 117ff.
[90] Regarding the translation of Byzantine documents by Byzantine authorities during the Komnenian and Angelos dynasties, see Gastgeber, *Übersetzungsabteilung* and of the same author, *Neue Ergebnisse*.
[91] See, for example, the Latin translation of the first preserved chrysobull for Venice, Reg. 781 and the observations of its editor in chapter II, 1.1.
[92] Reg. 1647.

Si vero Grecus fuerit idiota quidem, et non ex senatus consulto aut de clarioribus hominibus curie imperii mei consistens, apud legatum Veneticorum et sub eo iudices de iniuria et dedecore movebunt[93] causam, et ab istis suscipiet vindictam.[94]	If however, there is a Byzantine common person who does not belong to the senate nor to the splendid men who form the court of my Majesty, he will bring the case for injury and dishonour before the representative of the Venetians and his judges, and he will receive retribution from them.

The term "ex senatus consulto" is certainly an error made by the translator and the correct form must have been "ex senatu." This mistake is an example of how 'mechanical' the translation sometimes was in these documents. As I have explained, the translator probably used the word from a list that he had at his disposal for translating official documents and automatically filled in "ex senatus consulto" instead of the correct form, "ex senatu." Moreover, legal terms such as "κατοχή" and "νομή" were not always translated into the same terms in Latin. In short, the translation is not a consequent one, as far as the legal terms are concerned. It is obvious that the translators did not have a juridical background since legal terms were often translated in a completely wrong sense. For example, the expression in Greek "ἐν κατοχῇ καὶ νομῇ εἶναι" meaning "being in possession", is translated in the chrysobull of Isaac II Angelos in 1192 to Genoa, as "esse in detentione et distributione"[95]; whereas *detentio* can mean "κατοχή" in the legal sense, the term *distributio* is a literal translation of the word "νομή" meaning "distribution". The word *distributio* is therefore not a legal term and proves that the translator was not a jurist.

Another interesting point in the above excerpt is that the word *Grecus* is used instead of *Romanus* or *Rhomaios*. In almost all Latin translations we find the word *Grecus* as a translation of the word in Greek "'Ρωμαίος". This can also be an indication that in these cases when the word *Grecus* is used in the Latin translation the person translating this part was presumably a Latin speaker. Only in a few cases the Greek "'Ρωμαίος" has been translated in Latin

[93] I think it is better for the translation to accept the form *movebit* suggested in the other manuscript because it is then singular and the phrase makes more sense, see Pozza and Ravegnani, *I trattati*, p. 137, footnote bz., no 11.
[94] Pozza and Ravegnani, *I trattati*, p. 135, lines 13-16, no 11.
[95] Reg. 1609.

as *Romanus* or *Romeos*,[96] a translation that one would expect since the translation was made by imperial officers.[97]

The Italians therefore returned home with an act in Greek and its Latin translation. The chrysobull of Isaac II Angelos to Pisa in 1192 offers valuable information about the validity of the translation.[98] According to the editors of this act, at the end of the Latin translation the following Greek text is included, which was written on the reverse of the Latin translation:[99]

Τὸ παρὸν ἶσον τοῦ γεγονότος τῷ κάστρῳ Πίσσης βασιλικοῦ καὶ προσκυνητοῦ χρυσοβούλλου λατινικοῖς γράμμασι γραφὲν καὶ τῷ πρωτοτύπῳ τῇ χρυσῇ βούλλῃ συσφραγισθὲν ἐπεσημάνθη ἔξωθεν τῇ ἡμετέρᾳ ἐπιγραφῇ δι' ἀσφάλειαν μηνί φεβρουαρίῳ. Ὁ σεβαστὸς καὶ λογοθέτης τοῦ δρόμου Δημήτριος ὁ Τορνίκης.[100]

The present copy of the imperial and venerable chrysobull which has been made for the city of Pisa, written in Latin letters and sealed together with the original with the golden bull, has been marked on the outside part with our signature for safety in the month of February; the *sebastos* and *logothetes tou dromou*, Demetrios Tornikes.

In this text, the Byzantine official confirms that the Latin translation was made by the Byzantine side for the Pisans and that they received it together with the original chrysobull in Greek. This explains why today we find the original act in Greek and its Latin translation in Italian archives. What is interesting from the Greek text found on the reverse of the Latin translation is that both the Greek text of the chrysobull and its Latin translation receive the golden seal by the Byzantine official, the *logothetes tou dromou*. Given that both acts, namely the chrysobull in Greek and its Latin translation, have the same legal force, one wonders which of the two texts would have prevailed if a dispute on a provision were to occur and what would have happened if the Latin text differed from the Greek on some issue. Nothing is mentioned about this matter in the examined material, but I assume that since the Greek text was, after all, the original one, in case of disputes the Greek text should have been consulted.

---

[96] See, for example, Reg. 1255 ("ὡς οἱ Ῥωμαῖοι" is translated in Latin as "sicut Romei" in Müller, *Documenti*, p. 44, line 57 and p. 52, line 50, respectively, no XXXIV); Reg. 1498 ("κατὰ τινος Ῥωμαίου" is translated as "adversus aliquem Romanum" in *MM*, vol. 3, p. 35, line 64, no V and in *Cod. Dipl. Genova*, vol. III, p. 61, lines 18-19, no 21 respectively). See also on how the title of the emperor was translated in Latin further on, in chapter III, 2.2.1.

[97] On the nationality of the translators and interpreters used in the Byzantine offices, see Gastgeber, *Übersetzungsabteilung*, especially where the author refers to issues of the translation technique in vol. I, on pp. XXXVI- XL.

[98] Reg. 1607.

[99] Müller, *Documenti*, p. 58, no XXXIV in the end of the Latin text of the chrysobull it is mentioned: "A tergo della versione latina, dove sono incollati insieme i diversi fogli, si legge:.." (and then the Greek text follows; this text was not translated into Latin).

[100] Müller, *Documenti*, p. 58, no XXXIV at the end of the document.

The Latin translation was prepared in the Byzantine offices.[101] Although the translation was not always a good one, the fact remains that the palace had people who could work in Latin at its disposal. In the examined documents, we have come across Byzantine officials who were characterised as interpreters and were usually sent to the Italian city in order to accompany another Byzantine official, in whose presence the Italians promised to observe the agreement with the emperor. For example, in two acts reference is made to an interpreter named Gerardo Alamanopoulos (Γηράρδος Αλαμανόπουλος) who accompanied the Byzantine official Nikephoros Pepagomenos to Genoa.[102] From the name of this interpreter, we assume that he must have been of German origin as his first name must be Germanic (Gerhard) and his surname Alamanopoulos could derive from the noun Allamania, namely Germany. Most plausible is that he was the son of a German.[103] From a letter addressed to the consuls of Pisa and sent by Hugo Etheriano, a Pisan living in Constantinople in 1166, we are informed that one of the imperial interpreters was a Pisan, named Leo Tuscus (from Tuscany) who was actually the brother of this Hugo.[104] Hugo informs the Pisan consuls about the inheritance of an important Pisan merchant, Signoretto who has died.[105] The Byzantine state intended to confiscate part of the inheritance, but due to the intervention of Leo Tuscus, who was close to the imperial environment and was a distinguished interpreter (*egregius interpres*), the confiscation did not take place. As I have mentioned earlier, in the examined material we have seen examples in which the Latin translation was probably made by a Greek native speaker because of the terms that are used in Latin; a native-Latin speaker would never use these terms nor would he use Greek terms, such as *philotimia* instead of Latin terms. However, the fact that one of the interpreters used by the emperor was Pisan and also the fact that the "Ρωμαίος" is translated as *Grecus* and not *Romanus* raises questions about how and by whom exactly the Latin translations of the Greek chrysobulls were made.[106] Moreover, the fact that a Pisan was used by the emperor as an official interpreter could have raised questions about the objectivity of this interpreter.

[101] On this issue, see Gastgeber, *Übersetzungsabteilung* and of the same author, *Neue Ergebnisse*.
[102] Reg. 1609 and Reg. 1610.
[103] On the activity of Alamananopoulos as a translator, see Gastgeber, *Übersetzungsabteilung,* vol. 2, pp. 350-381.
[104] See Classen, *Burgundio*, p. 24. The letter is published in Müller, *Documenti*, pp. 11-13, no X.
[105] For more on Signoretto, see chapter V,1.
[106] See Gastgeber, *Übersetzungsabteilung*. See also chapter III,2.2.1 the observations of Classen about the involvement of Burgundio of Pisa in the translation of Byzantine acts.

CHAPTER II – Acts directed at Venice[107]

The Macedonian dynasty

1. The chrysobull of Basil II and Constantine VIII in 992 (Reg. 781)

1.1 Introduction

In 991, at the age of thirty, Pietro II Orseolo was elected doge of Venice. War was not good for the market and the new doge realised this early on. He understood that it was in the best interests of Venice to maintain a balanced relationship with both the German and Byzantine Empires. Hence just one year after his election, the Republic of Venice established separate treaties with both empires.[108] After the doge petitioned for better and more favourable regulation of the financial matters regarding Venetian trade, the Byzantine emperors Basil II and Constantine VIII granted the privilege act of 992, which is the first preserved Byzantine chrysobull in favour of Venice.[109] This act, as with all Byzantine privilege acts towards Venice, has not been preserved in its original Greek form, but only in its Latin translation.[110] As Pertusi points out, the act is written in 'barbaric Latin' which, at some points, is very difficult to understand[111] and it is evident from many parts that it is a translation from a Greek text, possibly made by a Greek native speaker.[112] This act is an example

[107] For political and commercial aspects of the acts directed at Venice, see Lilie, *Handel und Politik*, pp. 1-68.

[108] For the treaty with the German emperor, Otto III, see Nicol, *Byzantium and Venice*, pp. 39ff. See also Kretschmayer, *Geschichte*, 126ff. and Norwich, *Venice*, pp. 50ff.

[109] Reg. 781; see Pertusi, *Venezia e Bisanzio (Saggi)*, pp. 67-107, especially pp. 73-80. See also Lilie, *Handel und Politik*, pp. 1-8; Tůma, *Imperial chrysobull*, pp. 358-66; Koder, *Sigilion*, pp. 40-44.

[110] The act is preserved in three manuscripts which can be found in the state archives of Venice. For information about the manuscripts and corresponding editions see Pertusi, *Venezia e Bisanzio (Saggi)*, pp. 102-103, Pozza and Ravegnani, *I trattati*, pp. 21-22, no 1 and Dölger, *Regesten*, 1 Teil, Reg. 781, p. 100; see also Neumann, *Quellen*, p. 366-378 and chapter I,3. See also the opinion of Schminck who suggests that the act is a falsification from about the year 1204 in Schminck, *Einzelgesetzgebung*, p. 307. For a diplomatic analysis of this act, see Gastgeber, *Übersetzungsabteilung*, vol. 1, pp. CXII-CXVI.

[111] Pertusi, *Venezia e Bisanzio (Saggi)*, p. 73; Heinemayer, *Die Verträge*, pp. 84-85.

[112] For example, the phrase "..sed suum iustum perdiderunt" in Pertusi, *Venezia e Bisanzio (Saggi)*, pp. 104, lines 30-31; in Latin texts, the verb *perdo* is usually used with the words *causam* or *ius* or *litem*, whereas in Greek the expression "ἀπόλλυμι δίκαιον" would have been used; see for example: B. 58,20,1 = D. 43,20,1 (BT 2697/19); B. 35,17, 2 = D. 37,11,2 (BT 1642/16); BS 2297/23 (sch. Pb 1 ad B. 39, 1,1 = D. 5,2,6).

of a chrysobull *sigillion*[113], which is mentioned twice in the act.[114] The fact that the chrysobull was issued upon the initiative of the Venetians may be concluded from various parts of the chrysobull. In the beginning of the text, for example, it is mentioned that the doge and his officers addressed the emperors with a request.[115] Further on, the emperors confirmed that they granted the Venetian request and proceeded to issue their chrysobull.[116] The main privilege granted by this act is that the Venetians would receive an important reduction of the custom taxes in the harbour of Abydos.[117] From this point on, the Venetians would only have to pay 2 *solidi* upon entering Abydos and 15 *solidi* upon departure, thus altogether 17 *solidi* instead of 30, which was the amount that they had been paying previously.[118] Just by looking at the map of the Byzantine Empire one can easily understand why custom taxes were paid in Abydos. The harbour of Abydos is situated right at the entrance of Hellespont, today the city of Çanakkale, and served a practical function as a natural custom post, which no ship on the way to and from Constantinople could avoid. In exchange for this reduction in customs tax, the Venetians were required to help the Byzantine Empire with their fleet in the southern part of Italy. Many scholars have studied this act in the context of the commercial privileges it provided.[119]

[113] For the different types of chrysobulls, see Dölger and Karayanopoulos, *Urkundenlehre*. On the question of why the form of a chrysobull is used, see chapter I,3. For the component parts of this chrysobull, see Koder, *Sigilion*, pp. 40-44.

[114] It is mentioned once in the beginning of the chrysobull (in the part of the *protocol*) where we read: "In nomine Patris et Filii et Spiritus Sancti. Basilius et Constantinus omnibus, quibus istud nostrum pium sigillum demonstretur, fideles in Christo imperatores Romanorum" in Pertusi, *Venezia e Bisanzio (Saggi)*, p. 103, lines 1-2; and once more at the end where the emperors certify their grant (in the part of the *corroboratio*): "...de nostro imperio, sufficiendo omni demonstratione sola de ipso nostro pio chrysobullio sigillo..." in Pertusi, *Venezia e Bisanzio (Saggi)*, pp. 104-105, lines 47-48.

[115] "Aeque enim et dux Veneticorum et qui sub illo est cum omnis plebis intercessione cumprecationem ad nostrum fecerunt imperium, ut..." in Pertusi, *Venezia e Bisanzio (Saggi)*, p. 103, lines 6-8.

[116] "Ideo exaudiunt eorum deprecationem et iussum faciunt per istum suum pium chrysobullum..." in Pertusi, *Venezia e Bisanzio (Saggi)*, p. 104, line 18.

[117] For the special administrative status of Abydos, see Ahrweiler, *Fonctionnaires*, pp. 239-46 and Antoniadis-Bibicou, *Recherches*, pp. 179-81. For the tax exemptions of the Italians in general see Oikonomides, *Byzantine State*, pp. 1050-1058.

[118] On why the amount was higher upon leaving Abydos, see the interpretation by Hendy, *Studies*, pp. 282ff.

[119] See, for example, Kretschmayr, *Geschichte*, pp. 128ff. and Lilie, *Handel und Politik*, pp. 1-8.

1.2 Legal Issues

The main legal issue in the chrysobull of 992 in favour of Venice derives from the following provision:

Insuper et hoc iubemus, ut per solum logothetam, qui tempore illo erit, de dromo, ista navigia de istis Veneticis et ipsi Venetici scrutentur et pensentur et iudicentur, secundum quod ab antiquo fuit consuetudo; et quibus iudicium forsitan inter illos aut cum aliis crescetur, scrutare et iudicare pro ipso solo logotheta et non pro alio iudice qualecumque unquam."[120]

Moreover we hereby order that the ships of the Venetians and the Venetians themselves will be searched, examined and judged only by the *logothetes tou dromou* who is at that time in service, as has been the custom of old; and a case that will arise between them or between them and others [will be] investigated and judged only by the *logothetes* and by no other judge whatsoever.

In the text above, the emperors order that the *logothetes tou dromou* has exclusive authority to examine the ships of the Venetians. He is further appointed as the *only* judge who has the right to judge cases arising between the Venetians themselves and between them and others. As it is stated in the passage, the *logothetes tou dromou* had already all these functions by means of a custom. In other words, the Venetians must henceforth address the *logothetes tou dromou* for any legal problem that arises regarding their affairs. This provision creates a favourable legal status for the Venetians. It is stated that if a trial were to arise (*iudicium crescetur*) either between Venetians (*inter illos*) or between Venetians and others (*aut cum aliis*), only the *logothetes* himself (*ipso solo logotheta*) and no other judge (*et non pro alio iudice*) could judge the case (*scrutari et iudicare*). In Latin, the verb *scrutor* means "to examine carefully" or "to investigate".[121] In this text, where it is used in combination with the verb *iudicare*, it refers to the functions of the judge, namely the *logothetes tou dromou*. Unfortunately, the chrysobull has not been preserved in its original Greek form, so we do not know the equivalent Greek term used to describe the functions of the judge, and therefore cannot make a comparison of the legal terminology in both languages. The Latin term *scrutari et iudicare* must correspond to the Greek expression "ἐξετάζειν καὶ κρίνειν," an expression that we sometimes come across in Byzantine legal texts regarding the functions of a judge.[122]

---

[120] Pertusi, *Venezia e Bisanzio (Saggi)*, p. 104, lines 31-35.

[121] Lewis and Short, *Dictionary*, p. 1650.

[122] See for example Nov. 79,1,10: "..τὸ πρᾶγμα ἐξετάζειν καὶ κρίνειν.."; B. 2,6,23 = Nov. 113 c. 1 pr. (BT 79/3-4): "...ἐξετάζειν ἢ κρίνειν τὴν ὑπόθεσιν..."; B. 7,1,17 = Nov. 113c.1pr (BT 303/19): " ..ἐξετάζειν ἢ κρίνειν ὑπόθεσιν..." and B. 2,6,24 = Nov. 113c.1 § 1 (BT 79/25), here not as verbs but as nouns: "...ἐξέτασιν ἢ κρίσιν..."

In the Latin translation of this chrysobull, the term *iudicium* is used together with the verb *crescere*[123] to express that a trial in court takes place between the Venetians or between them and others.[124] If an attempt were made to reconstruct the original Greek text from the preserved Latin translation, the term *iudicium* could have been the translation of the Greek term "δίκη" or "δικαστήριον" or "κρίσις" or also "κριτήριον".[125] Since no specific reference is made to whether the *logothetes tou dromou* is competent to judge civil or criminal cases and given that the general term *iudicium* is used here (which traditionally refers to both civil and criminal cases), it is plausible that by the chrysobull of Basil II and Constantine VIII in 992, this Byzantine officer was appointed as the exclusive judge of both civil and criminal cases for the Venetians.

This provision regulates a general matter of law of procedure in which the *logothetes tou dromou* becomes the competent judge for all cases regarding Venetians. As mentioned above, no specific distinction is made between civil or criminal cases; no reference is made to whether the Venetian might be the plaintiff or the defendant in cases where the *logothetes tou dromou* is the judge[126] and in general, no details are mentioned. Moreover nothing appears about the *legati*, who were representatives of the Venetians appointed by the Republic in Constantinople to regulate the administrative matters of the Venetians and who later, as we will see further on, were granted by the Byzantine emperors the right to judge certain cases.[127] The fact that the chrysobull does not mention the *legati* does not necessarily mean that the *legati* did not exist at that time. Perhaps, after all, the *legati* existed but dealt, for example, only with cases involving the Venetians themselves. In this chrysobull, the order is clear: the *logothetes tou dromou* has general jurisdiction for all cases arising between Venetians or between Venetians and others: nothing less, nothing more.

Little information is preserved about the actual practice of legal procedure in Byzantium. However, it has been established that matters of the competent court and judge were an issue that raised many questions and discussions in Byzantium.[128] In a very complicated administrative and judicical

[123] "Cresco" means "to come forth, grow, arise, spring, be born, become visible, appear", in Lewis and Short, *Dictionary*, p. 481; here it is used in the sense of "arises", "comes forth".

[124] For the use of the term *iudicium* in Roman law, see Heumann and Seckel, *Handlexicon*, pp. 294-97 and Berger, *Dictionary*, p. 520.

[125] See the observation of Burgmann for the word "κριτήριον" in Burgmann, *Rechtsprechung*, p. 908, note 12.

[126] This is a distinction that we will come across in the chrysobull of 1198 by Alexios III Angelos, Reg. 1647.

[127] The *legatus* was possibly the forerunner of the later *bailus*; see Maltezou, *Bailos*. The Venetian *legatus* was granted jurisdiction for some cases by the Byzantine emperors in the chrysobull of 1198, Reg. 1647, see chapter II,7.2.

[128] I will return to this matter in chapter V,3 where the subject of the authorities competent to judge the Italians will be discussed.

system known for its bureaucracy, such a provision created favourable conditions for the Venetians because it gave them the possibility to address a single judge for all their legal matters, thus simplifying decisively the corresponding legal procedure. In other words, this provision expedited the affairs of the Venetians. In the world of trade and merchandise, saving time meant saving money and the Venetian merchants would have undoubtedly been satisfied in receiving this privilege.[129] I have already mentioned that the issue of the competent court was a favourite subject in Byzantine law; it was often discussed because it raised so many questions. In this chrysobull however, we read that the 'problem' of the competent court is solved for the Venetians in a very simple way: one judge is to be addressed for all cases.

What is even more important from a legal point of view is that the emperors appoint the *logothetes tou dromou* as competent judge not only for matters arising between Venetians, but also for cases which arise between the Venetians and others (*cum aliis*). The fact that no explanation is given as to whether these *alii* are other foreigners living in the Byzantine capital or are Byzantine citizens, could be an indication that all categories are included under the term *alii*. Regarding the *legati*, namely the representatives of the Republic in Constantinople mentioned earlier, and the question of whether at that time they had the right to judge cases regarding Venetians, I conclude that since nothing is mentioned about them, they did not have this right, at least not officially, that is, by a permit of the Byzantine emperors.[130] The authority given to the *logothetes tou dromou* to judge all kinds of cases concerning the Venetians offers another legal advantage and that is legal certainty: having one judge to deal with all matters means that he often deals with the same legal problems and gives the same solutions, hence creating, through every legal matter that arises, sound legal grounds for specific juridical matters. Moreover the Venetians were not to be judged by judges of ordinary courts but by Byzantine officer of higher rank, the *logothetes tou dromou*.[131]

By the end of the 9th century or beginning of the 10th century, the *logothetes tou dromou* dealt with foreign and diplomatic policy matters. He was, for example, responsible for the communication with foreign diplomatic envoys within the empire and he was involved in matters regarding ambassadors, especially in their selection and instruction.[132] In other words, this officer acted like a present-day minister of foreign affairs.[133] It is thus not

[129] Lilie also mentions that such a provision is in any case helpful for the Venetians; see Lilie, *Handel und Politik*, pp. 6-8.

[130] I use the term 'officially' here because it is logical that the Venetians would have regulated their legal matters on their own in practice. I can not therefore exclude the possibility that for legal cases arising between them, the Venetians may have addressed their own judge either in Venice or in Constantinople, if one existed there at that time.

[131] See also Maltezou, *Bailos*, p. 71.

[132] For the office of the *logothetes tou dromou,* see Miller, *Logothetes*, p. 439; see also Guilland, *Logothètes*, pp. 31-70; see also *ODB*, vol. 2, pp. 1247-1248.

[133] Guilland, *Logothètes*, p. 33.

surprising that by this act the emperors ordered the *logothetes tou dromou* to judge cases involving the Venetians, since this task undoubtedly fell within his general duty to administer foreign affairs. In any case, the fact that the *logothetes tou dromou* acted in this capacity as a judge also is interesting since –as far as I know- it is the first time that his function as a judge on his own is recorded in a Byzantine source.[134] In a later chrysobull, we will see that his jurisdiction regarding the Venetians is specified further.[135]

As the text progresses, the emperors do not seem completely satisfied with the legal provision for the Venetians. In particular, they want to prevent any misunderstanding regarding the competent authority for the Venetians. They want to make clear that any other officer or judge should be excluded and that the *logothetes tou dromou* is henceforth the exclusive competent authority to examine the Venetians. So as to avoid any confusion, the emperors proceed to mention one by one all the officers who are not permitted to examine the Venetians:[136]

Ideo iubemus, et omnibus mandamus de ipso secreto eparchali -ut ipsi cartularii, qui sub illo sunt, et notarii parathalassii, limenarchi, hypologi de destricto et illi qui dicuntur xylocalami, commerclarii de Avido-, aut alios homines quibus reductus est in imperiali servitio usque in minimo servitio, verum hoc de publico, etiam nullum hominem habere licentiam unquam tempore per qualemcumque ocasionem aut ipsis Veneticis aut illorum navigiis tentare aut tangere aut scrutare aut dicere illis pro quibus aut qualecunque ocasione perquirere.[137]

Therefore we order and we instruct that all the persons who serve in the *sekreton* [department office] of the eparch itself – such as the *chartularioi*, who are under his service and the *notarioi parathalassioi*, *limenarchioi*, *hypologioi de destricto* and those who are called *xylocalamioi*, *commerciarioi* of Abydos- and all other people who fall in the imperial service up to the lesser service or in public service[138], (that of all these persons) no-one has the license at any time and on any occasion to touch, search or investigate any man of these Venetians or any boats of them or inquire upon them on any occasion.

[134] See also chapter V, 3.1.

[135] See the chrysobull of Alexios III, Reg. 1647 in chapter II, 7.2. On whether the *logothetes tou dromou* was competent to judge other foreigners see chapter V, 3.

[136] At this point I do not agree with *Dölger* who, in the summary of this act in his *Regesten*, mentions that in the following passage it is provided that this order should be made known to the *logothetes tou dromou* and all his sub-officials, his *chartularioi* and *notarii*, to the *parathalassarioi*, *limenarchai* etc.. ["Dieser Befehl soll bekannt gemacht werden an den λογοθέτης τοῦ δρόμου und alle seine unterorgane, seine chartularioi und notarioi, an die parathalassarioi, limenarchai ..etc."], Dölger, *Regesten*, 1 Teil, Reg. 781, p. 100. These officers are included here not because they should be notified of the order, but indicatively to stress that they are not allowed to interfere in the matters of the Venetians; only the *logothetes tou dromou* is responsible for the Venetians' affairs.

[137] Pertusi, *Venezia e Bisanzio (Saggi)*, p. 104, lines 35-41.

[138] Presumably, he means something like: "and everyone who serves in any position".

Of the offices listed, questions could be raised about the term *secreto eparchali*. First of all, the term *secretum* (σέκρετον) means a bureau or department, so the *secretum eparchali* must mean the department of an eparch, of a prefect.[139] Pertusi suggests that the *secretum eparchali* is connected to the office of the so-called *eparchos paratalassites*[140] that we find in the chrysobull that follows, namely that of Alexios I Komnenos in 1082.[141] However, I strongly believe that the eparch mentioned here could actually be the prefect of Constantinople (ἔπαρχος τῆς πόλεως) for the following reasons.

First of all, as far as we know, there was never an officer named *eparchos parathalassites* in the Byzantine administrative system. The *parathalassites* was a judge for sailors (οἱ δὲ πλέουσι τὴν θάλασσαν, καὶ ὑπόκεινται τῷ παραθαλασσίτῃ)[142] and in the 9th century, according to the *Kletorologion* of Philotheos, he was subject to the eparch of the city.[143] Some scholars have argued that later on, in the 11th and 12th centuries, the *parathalassites* became a higher officer and became independent from the eparch of the city.[144] In any case, the eparch is different from the *parathalassites* and I therefore think that this is also the case in the chrysobull of Alexios I Komnenos in 1082. Reference is made there not to the *eparchos parathalassites*, as Pertusi suggests,[145] but to the two officers separately; namely the eparch and the *parathalassites*. These officers are mentioned in succession and are followed by other offices further on in the document:

> "Excident vero et ab ipso eparcho, parathalassite, eleoparocho dominico, commerkiariis, chartalariis, hypologis et omnibus qui huiuismodi sunt [...]."[146]

---

139 *ODB*, vol. 3, p. 1866.

140 This is the spelling of the editor, see Pertusi, *Venezia e Bisanzio (Saggi)*, p. 106, commentary, line 36.

141 Reg. 1081. Pertusi, *Venezia e Bisanzio (Saggi)*, p. 106; in the comment of line 36: "...si tratta certo dell' ufficio dell' eparco parathalassite, su qui cfr. la crisobolla di Alesio I, a. 1082". In the edition of Tafel and Thomas the *secretum eparchali* is omitted but there is a list of all the other officers who do not have the right to deal with cases regarding the Venetians and who are also mentioned in the Pertusi edition, see *TTh*, vol. I, p. 39, lines 1-5, no XVII. However Tafel and Thomas did not have all the manuscripts at their disposal, see Pertusi, *Venezia e Bisanzio (Saggi)*, p. 102.

142 *Peira*: 51,29 in Zepos, *JGR*, vol. IV, p. 218.

143 *ODB*, vol. 3, p. 1586.

144 *ODB*, vol. 3, p. 1587. On the *parathalassites*, see also Goutzioukostas, *Aponomi*, pp. 193-4.

145 Pertusi, *Venezia e Bisanzio (Saggi*), p. 106.

146 Borsari, *Il crisobullo*, p. 126. Borsari stresses that in this act the officers mentioned are, among others, the prefect of Constantinople and the *parathalassita*, who was in the beginning answerable to the prefect but in the 11th century became more independent, the *elaioparocho*s etc. See Borsari, *Il crisobullo*, p. 120.

A second argument in support of the eparch being the prefect of Constantinople is the following. It is known that the prefect of Constantinople was responsible for the matters of foreigners in the capital, as was provided in the *Prefect's Book*. This legal book from the 10th century is addressed to the prefect of Constantinople (ἔπαρχος τῆς πόλεως), who was also responsible for overseeing the commercial activity within the Byzantine capital;[147] he supervised, for example, the export and import of products within the capital. In this book, we read that special competent officers (βουλωταί) inspected products and put a stamp on those products that were not forbidden in order to certify their legitimate export. These authorities had the right to enter the workshops of the manufactorers in order to accomplish their work and anyone who prevented them from doing so was to be punished according to the *Prefect's Book*.[148] One well-known example is that of Liutprand, the bishop of Cremona, ambassador of the emperor of Germany, Otto I, in Constantinople in 968. According to his testimony, as he was ready to depart from Constantinople his luggage was checked. When the authorities saw that he had products that were not allowed for export, they confiscated these products despite Liutprand's complaints. The competent Byzantine authorities emphasized the exclusivity of the trade of purple cloth, to which the ambassador, known for his cynical manners, replied that after all, it was not so difficult to find this cloth in the West. When questioned by Byzantine officials as to who provided them with these products, he answered that they could be acquired from Venetian and Amalfitans traders. The officers replied that from now on these traders would be searched and, if forbidden products were found, the contraveners would be punished by hitting and cutting of hair.[149] Moreover, in chapter 20 of the *Prefect's Book* we read that, after approval by the emperor, the prefect appointed an official (the so-called *legatarios*) to supervise the foreign merchants who entered the city of Constantinople.[150]

In the chrysobull by Basil II and Constantine VIII from 992, the emperors ordered that from that point on, the *logothetes tou dromou* shall be the competent officer for any matters regarding the Venetians. In the text that follows, the emperors make clear that no other officer has the right to interfere in Venetian matters. Since the eparch was normally competent for matters of foreign merchants, it seems logical that they would want to include him in their list of officers who should not interfere in the matters of Venetians; otherwise a misunderstanding could have arisen from this provision in contrast with the

147 *ODB*, vol. 1, p. 705.

148 *Prefect's Book*: 8.3 in Koder, *Das Eparchenbuch*, p. 104. On the *Prefect's Book*, see Christophilopoulos, *Eparchikon*.

149 "…'Unde –inquiunt- vobis?' 'A Veneticis et Amalfitanis institoribus, -inquam- qui nostris ex victualibus, haec ferendo nobis, vitam nutrient suam.' 'Sed non amplius hoc facient! –aiunt- Scrutabuntur plane, et si quid huiusmodi inventum fuerit, verberibus caesus crine tonsus poenas dabit.'..." in *Liutprandi*, pp. 211-12, par. 55.

150 *Prefect's Book*: 20 in Koder, *Das Eparchenbuch*, p. 132.

provisions of the *Prefect's Book*.[151] What the emperors want to stress here is that not even the department of the eparch himself and his officers (*de ipso secreto eparchali ut ipsi cartularii...*), nor the officers names in the document have the right to deal with Venetian affairs. The eparch is mentioned in the beginning because he is the most important of all the officers listed here. In other words, it is logical that the *parathalassites* appears after the eparch because the former is subject to the latter. Further in the document the emperors repeat their order that the Venetians will be subject only to the *logothetes tou dromou*.[152] Finally, reference is made to a general sanction in case someone violates the included provisions. If someone violates the emperor's orders, he will face the imperial anger.[153] However no specific sanction is mentioned, for example the payment of a fine, which we come across in later acts.

[151] The most probable dating of the *Prefect's Book* must be between 911 and 912, see Troianos, *Piges*, p. 301.

[152] "Nostro imperio commendabit illos (=the Venetians) esse sub manu de logotheta de dromo solo..." in Pertusi, *Venezia e Bisanzio (Saggi)*, p. 104, line 42.

[153] "Qui ausus fuisset contrarium quod nos iussimus et hic scripsimus, pro quovis prevaricare et qualecunque contrarium faciunt, super eum venire desdegnationem et iram de nostro imperio..." in Pertusi, *Venezia e Bisanzio (Saggi)*, p. 104, lines 45-47.

The Komnenian dynasty

2. The chrysobull of Alexios I Komnenos in 1082 (Reg. 1081)

2.1 Introduction

When Alexios I Komnenos became emperor in 1081 the Byzantine Empire was threatened by many dangers in both Eastern and Western territories.[154] In the East, the empire had to face the Seljuk Turks but far more dangerous were the Normans who had already invaded the north-western part of the empire and had become a serious threat to the empire. Under the leadership of Robert Guiscard, they intented to occupy Durazzo, a city of great importance since it was the end-point of the ancient via Egnatia. The Byzantine emperor asked the Venetians to help with their fleet and they agreed; after all, the Venetians were also interested in controlling the Adriatic Sea and the Normans were their enemy also. Venetian help was not to be given, however, without appropriate payment from the Byzantines.[155] In 1082, Alexios I Komnenos granted a generous chrysobull that included important commercial privileges for the Venetians, an act that served as the foundation for all forthcoming Byzantine imperial privileges to Venice.[156]

Today only the Latin translation of the act has been preserved, indirectly, in two versions: the first version is inserted in the chrysobull of Manuel I Komnenos of 1147[157] and the second appears in the chrysobull of Isaac II Angelos of 1187.[158] These two lengthy chrysobulls actually include more Komnenian chrysobulls directed at Venice, as we will see further on; both chrysobulls are currently kept in the city archives of Venice.[159] While the two versions have very slight differences as far as content is concerned, the Latin of the second version is far better than that of the first.[160] First of all, by this

[154] *Anna Komnene* describes this vividly in her history, An.Komn. 6,3,3 (172/34-173/50).
[155] For the historical events in detail, see: Kretschmayr, *Geschichte*, pp. 160-68; Nicol, *Byzantium and Venice*, pp. 50-67 and Christophilopoulou, *Byzantini Historia*, pp. 32ff.
[156] See Borsari, *Il crisobullo*, pp. 111-131; See Dölger, *Regesten*, pp. 93-95; Martin, *Chrysobull*, pp. 19-23. Extensive articles have been written on this, see Tuiler, *La date*, pp. 27-48; Tůma, *The dating*, pp. 171-185; Madden, *The chrysobull*, pp. 23-40 and the rejoinder to this article by Jacoby, *The chrysobull*, pp. 199-204.
[157] Reg. 1365.
[158] Reg. 1576. Dölger mentions only the first version here, the one inserted in Reg. 1365, see Dölger, *Regesten*, p. 94. Borsari mentions both versions and has included both in his edition, see Borsari, *Il crisobullo*, pp. 124-131.
[159] For the manuscripts of the acts, see Borsari, *Il crisobullo*, p. 112.
[160] Borsari, one of the editors of this act, mentions that the translator of the first version, the one inserted in the chrysobull of Manuel I Komnenos, must have been a Greek with a rather limited knowledge of the Latin language ["L' autore della traduzione del crisobullo del

chrysobull the emperor grants annual payments to Venetian churches and in particular, to the church of Saint Marc in Venice. To the Venetian church of Saint Akindynos in Constantinople he also grants a bakery that is situated near the church and pays revenue of 20 *hyperpyra* per year.[161] Moreover, the doge is granted the title of *protosebastos*, whereas the patriarch of Venice is granted the title of *hypertimos*.[162] As stated in the chrysobull, the granting of these titles is not connected to the specific persons of the doge and the patriarch, but is valid for their successors also; both titles are accompanied by a salary, the so-called *roga*. The title *hypertimos* was a very important title granted to men of the Church.[163] Michael Psellos himself was granted this important title in the last years of his life, when he became a monk. Whether it was the Venetians who asked for this title, or whether this was granted on the emperor's initiative with an intention to 'recognize' a place for the patriarch of Venice within Constantinopolitan church structures, is difficult to say. In any case, it is not a coincidence that it is *only* the Venetian ecclesiastical leader who is granted such a prestigious title by the Byzantine emperor.[164]

Furthermore, the emperor extends the district of the Venetians in Constantinople. He grants property situated at the area of Perama (*embolon*[165] *Peramatis*) between the Jew's gate and the Vigla and three landing-stages, the so-called *scalai* (σκάλαι).[166] From all the preserved acts regarding Venice, this is the first time that reference is made to the Venetian district in Constantinople. No Byzantine act has been preserved by which the Venetian district in Constantinople was actually established. I cannot exclude the possibility that such an act did not exist because after all, it could have been that the Venetian district was formed gradually by the Venetians themselves: Venetians living in the Byzantine capital stayed close to each other and in this way, could have naturally formed a Venetian district. In any case, since a corresponding act that

1147 era evidentemente un greco con una conoscenza abbastanza limitata della lingua latina,..".], see Borsari, *Il crisobullo*, p. 111.

[161] According to all the preserved testimonies, the Venetians had four churches in their possession that were situated in the Venetian quarter in Constantinople: i) Saint Akindynos, which was the oldest of these churches, ii) Saint Marc of Embulo, for which the first reference appears in a document from 1150, iii) Saint Mary of Embulo, first referred to in a document from 1199 and finally iv) Saint Nicholas, which belonged to the Venetians from the 11th century. See Janin, *Géographie*, pp. 571-576. See also Maltezou, *Bailos*, pp. 68-70.

[162] In the past, Byzantine emperors had also granted Byzantine titles to the doges. See the act of emperor Theophilos in 838 (Reg. 437) by which he sends envoys to Venice in order to grant the title of *spatharios* to the doge and ask for the Venetians' help against the Arabs. See also the act of Basil I in 877-78 (Reg. 496a [501]) by which envoys are sent to Venice in order to grant the title of *protospatharios* to the doge Orso Badoer (Partecipazio).

[163] Grumel, *Titulature*, pp. 152-184.

[164] See also Penna, *Legal autonomy*, pp. 70-81.

[165] On the definition of the word *embolon*, see Brown, *Venetian quarter*, p. 75, where he notes that an *embolon* is probably "a place where merchants stored and sold their goods and generally transacted business".

[166] On the term *scala* (σκάλα), see Maltezou, *Il Quartiere*, p. 32.

establishes the Venetian district has not been preserved, one can only speculate about it. Furthermore, by this chrysobull the emperor grants the church of Saint Andrew in Durazzo to the Venetians.[167] Finally, the most important clause is that the Venetians are free to exercise trade within the Byzantine Empire, in those areas specified in the chrysobull, without paying any taxes to officials.[168]

The chrysobull of Alexios I Komnenos has been discussed and studied by many scholars.[169] It clearly had a tremendous impact on the Byzantine economy because of the commercial privileges granted to the Venetians. Many modern historians have, in fact, considered it a serious mistake on the part of the emperor.[170] While the main interest for historians lies in the commercial privileges of this act, it can also provide important information on the legal practice of that period as we will see in the next section. In this privilege act, legal information is not concentrated in one part as in the earlier chrysobull from 992, but rather is spread throughout the document, referring to grants of immovable property to the Venetians and sanctions for persons who infringe the included provisions.

[167] For details, see Nicol, *Byzantium and Venice*, p. 61 and Lane, *Venice*, pp. 27ff.

[168] Anna Komnene sums up the grants of her father towards Venice in this act and concludes that the Venetians were beyond any Roman power by virtue of this chrysobull: "...ὅς (=ὁ βασιλεῦς) διὰ πολλῶν τούτους (=τοὺς Βενετικούς) ἀμειψάμενος δωρεῶν καὶ τιμῆς, καὶ αὐτὸν τὸν Δοῦκα τῆς Βενετίας τῷ τῶν πρωτοσεβαστῶν ἀξίωματι μετὰ τῆς ἀναλόγου ῥόγας ἐτίμησεν, ὑπέρτιμον δὲ καὶ τόν πατριάρχην ἠξίωσε μετὰ τῆς ἀναλόγου ῥόγας. Ἀλλὰ καὶ πάσαις ταῖς ἐν Βενετίᾳ ἐκκλησίαις χρυσίου ποσότητα ἱκανήν ἐτησίως διανείμασθαι ἀπὸ τῶν βασιλικῶν ταμείων ἐκέλευσε. Τῇ μέντοι ἐπ' ὀνόματι τοῦ εὐαγγελιστοῦ ἀποστόλου Μάρκου ἐκκλησίᾳ ὑποφόρους ἅπαντας τοὺς ἐκ Μέλφης, ἐν Κωνσταντινουπόλει ἐργαστήρια κατέχοντας, πεποίηκε, καὶ τὰ ἀπὸ τῆς Παλαιᾶς Ἑβραικῆς Σκάλας μέχρι τῆς καλουμένης Βίγλας διήκοντα ἐργαστήρια καὶ τὰς ἐντὸς τοῦ διαστήματος τούτου ἐμπεριεχομένας σκάλας ἐδωρήσατο, καὶ ἑτέρων πολλῶν ἀκινήτων δωρεὰς ἔν τε τῇ βασιλευούσῃ καὶ τῇ πόλει Δυρραχίου, καὶ ὅποι ποτ' ἂν ἐκεῖνοι ἠτήσαντο, τὸ δὲ δὴ μεῖζον, τὴν ἐμπορίαν αὐτοῖς ἀζήμιον ἐποίησεν ἐν πάσαις ταῖς ὑπὸ τὴν ἐξουσίαν Ῥωμαίων χώραις, ὥστε ἀνετως ἐμπορεύεσθαι καὶ κατὰ τὸ αὐτοῖς βουλητὸν, μήτε μὴν ὑπὲρ κομμερκίου ἢ ἑτέρας τινὸς εἰσπράξεως τῷ δημοσίῳ εἰσκομιζομένης παρέχειν ἄχρι καὶ ὀβολοῦ ἑνὸς, <u>ἀλλ' ἔξω πάσης εἶναι ῥωμαϊκῆς ἐξουσίας</u>…" in An.Komn., 6,5,10 (178/25-179/40).

[169] See for example, Kretschmayr, *Geschichte* p. 179; Nicol, *Byzantium and Venice*, pp. 60-64; Lilie, *Handel und Politik*, pp. 8-16.

[170] See the observations of Runciman, *Economic History*, p. 146; also Mango, *Byzantium*, p. 58; Christophilopoulou, *Byzantine History*, pp. 258-259.

2.2 Legal issues

2.2.1 Granting immovable property

After the enumeration of all the grants, the emperor ordered that no one was permitted to act against the Venetians, who were considered true servants of the empire and helped fight against the enemies of the empire; moreover no one was to act against these grants. Then a clause is inserted which implies a legal procedure, namely that no one can was to raise any objections regarding these grants:

Hec igitur Imperii nostri pietas sic dispensas sanccit et precipit nullum eis repugnare tamquam rectis et veris clementiae nostre dulis et contra hostes auxiliatoribus et usque in finem seculi tales se fore pollicitis, nec quemquam omnino talibus sentire contraria vel alligationes aliquas contra eos exercere collatorum eis hic gratia ergasteriorum videlicet et scalarum...[171]	Allowing, then, these grants, our pious Majesty ordered and commanded that nobody is to oppose them since they are honest and true servants of our Clemency and assistants against the enemy and have promised that they will continue to be so till the end of time; and absolutely nobody is to entertain hostile feelings towards them or exercise any allegations against them because of what has been conferred to them, namely the workshops and landing-stages (*scalai*)...

Regarding the legal terminology used, it is interesting to note that in the first version of the Latin translation of the act, *alligationes exercere* is mentioned as *actiones exercere*.[172] The term *actionem exercere* is used in Latin to express that a legal action is being raised, "a judicial measure is being used either in order to claim a right against another person or in defense against another's claim".[173] Here, I think that it is used in the sense that no legal claim can be raised against these imperial grants. In the first (A) of the two preserved Latin versions, the original [unknown] Greek word is translated as *actio*, while in the second version (B) it is translated as *alligatio*. I assume that the original Greek word could have been the word "ἀγωγή", "ἔγκλησις" or "ἀπαίτησις".

[171] Borsari, *Il crisobullo*, (version B), p. 130, lines 62-67; I will refer to version B, the one preserved in the chrysobull of Isaac II Angelos (Reg. 1576); however, at some points I will also quote the abstract from version A, the one preserved in the chrysobull of Manuel I in 1147, for a better comparison of the legal terms used.

[172] "...nec quemquam omnino contraria sentire his talibus, nec actiones aliquas adversus omnes exercere propter tradita eis ergasteria et scalas istic..." (version A), Borsari, *Il crisobullo*, p. 127, lines 65-67.

[173] Berger, *Dictionary*, p. 462. See also Heumann and Seckel, *Handlexicon*, pp. 188-89 with examples of the word used in various sources.

In the text that follows, the emperor continues to specify his order. No one may seize the shops and landing areas that are hereby granted to the Venetians, not even persons or institutions, such as a church, that previously had rights connected to this immovable property, whether for ecclesiastical use or private or public use. These grants are not to be questioned by anyone because, as the emperor states, they now are "for the loyal Venetians".[174] "Who can go against such men or undertake any actions against them?" asks the emperor.[175] The verb used is *contradico*, which means "to oppose", "to deny", or "to object" in respect of a claim in a legal proceeding.[176] In attempting to reconstruct the original chrysobull in Greek with regard to its legal provisions, I speculate that perhaps the verb "ἀντιλέγω" was used in the original Greek text of the chrysobull and this word was translated in both preserved Latin versions as *contradico*. Moreover, the verb *aggredi* [*adgredi*] could also be used to indicate that a legal claim has been made.[177] It is interesting to note that in the other Latin version, a more obvious legal term is used in a question that reads as follows:

Et contra tales viros quis contradicet, vel contra eos iudicium movebit aliquando?[178]	And who can go against such men or bring some trial against them?

Movere is a verb that could be used in a legal context to express the fact that a legal process has begun: "to initiate a judicial measure".[179] Some examples here are: *litem moveo*, *causam moveo*, *actionem moveo*, *querelam moveo*, *accusationem moveo* etc.[180] The word *iudicium* is not often used with the verb *movere*. The fact that the second translator uses the term *iudicium moveo* is an indication that a legal procedure is suggested here.[181] The emperor mentions in the text that follows that neither the *sekreton* of Petrion nor the *sekreton* of Myrelaion nor any monastery or church to which the shops

[174] "…ergasteriorum videlicet et scalarum, cuiuscumque enim iuris hec sint, sive ecclesiastici, sive privati aut publici, sive sancte domus, nullus tamen tanget ea que nunc sunt existentium fidelium celsitudinis nostre Veneticorum et postmodum futurorum..." in Borsari, *Il crisobullo*, (version B), p. 130, lines 67-70.

[175] "Contra tales viros quis contradicet, aut quis placitum aggredietur?" in Borsari, *Il crisobullo*, (version B), p. 130, line 74.

[176] Berger, *Dictionary*, p. 414. See also Heumann and Seckel, *Handlexikon*, pp. 104-105 for references to the word in the sources of Roman law. For example, in the *Digest* we read: "...vel alterius desiderio contradicere" in D. 3,1,1,2; the corresponding part in the *Basilica* reads as follows: "...ἢ τῇ ἑτέρου θελήσει ἀντειπεῖν" in B. 8,1,1 = D. 3,1,1 (BT 403/9).

[177] Heumann and Seckel, *Handlexikon*, p. 13.

[178] Borsari, *Il crisobullo*, (version A), p. 127, lines 73-74.

[179] Berger, *Dictionary*, p. 588.

[180] See in detail the examples mentioned in Heumann and Seckel, *Handlexikon*, p. 354.

[181] However, it is strange at this point that one translator uses *placitum aggredietur* and the other uses *iudicium movebit*. This raises questions as to what might have been the original Greek term.

belonged, will henceforth go against the Venetians.[182] Here, the same terminology is used in both versions, namely *contra quemquam moveo*. Given the meaning of the text here, I think that this term is used in a legal context, in the sense that no one can act against the Venetians, more specifically, that no one can raise any legal actions against them regarding the granted donations. The original Greek term could have been "κινῶ κατά τινος."

According to preserved sources and archeological evidence, the monastery of Myrelaion seems to have been situated west of the Forum Tauri[183] and the monastery of Petrion was probably located near the Iron Gate in the Petrion region.[184] It could be that the areas granted to the Venetians here belonged to these two monasteries in the past. Perhaps in the past in similar cases involving a grant made by the emperor, objections were raised afterwards by the monasteries that had, up until then, owned the designated areas. The term *sekreton*, which is used in our acts, meant the bureau of a governmental official.[185] We are informed that the monastery of Myrelaion had a *sekreton*.[186] The administrative offices of the monasteries were probably described with the word *sekreton*.

What is evident is that the emperor wanted to exclude any possibility of question or doubt regarding his grants in favour of Venice. From this point on, these areas were granted to the Venetians without question. By this act the emperor granted, among other things, an area in Constantinople consisting of shops and landing areas to foreigners. The immovable property that the emperor grants does not belong to the Byzantine state. In the eyes of the inhabitants of the Byzantine capital, this generous grant would not have been seen positively. Not only had the Venetians been granted the right to trade without paying any tax within the empire, but their district in Constantinople was also extended. It is obvious that, as a consequence, the position of the Byzantine merchants had been dramatically weakened. The fact that the Venetians were not so popular in Byzantine circles can easily be seen in the Byzantine historical sources of that time.[187]

The emperor then provides information about the actual procedure of how these grants will be made: an act of delivery (*praktikon traditionis*) of the grants was to be written down by an imperial notary and registered together with this chrysobull at the competent authorities:

---

[182] "Quamobrem neque secretum Petrii aut Mirelei, neque familiarium aliquis, neque monasterium sive templum sanctum, quibus videlicet, collata ergasteria adtinent et scale, contra hos (=the Venetians) movebunt." in Borsari, *Il crisobullo*, (version B), p. 130, lines 75-77.

[183] *ODB*, vol. 2, pp. 1428-29.

[184] *ODB*, vol. 3, pp. 1643-4.

[185] *ODB*, vol. 3, p. 1866.

[186] Janin, *Géographie*, p. 351.

[187] See, for example, the testimonies of John Kinnamos in Kinn. p. 280, line 23 and of Niketas Choniates in Nik.Chon., p. 171, lines 45-55. On the comments made by Byzantine historians about the Venetians, see also Thiriet, *La Romanie*, pp. 42ff.

Eapropter dominabuntur colla-torum immobilium sine ablatione et infestatione amodo per omnes et assiduos annos secundum comprehensionem practici horum traditionis, quod eis componi debet a protoantipato Georgio et notario nostre serenitatis Machitario, quod et firmum erit et stabile atque inviolabile in omnibus que in eo continebuntur, idemque debet in illis substerni secretis, in quibus et presens nostri potestatus substernetur chrisobulum, ad noticiam collatorum rectis celsitudinis nostre <dulis> Veneticis et redargutionem illorum qui istos horum gratia intestare nitentur.[188]

Therefore, they [the Venetians] will master[189] the immovable property that has been given to them without any disturbance or disruption henceforth, for ever and continuously according to the content of the act of delivery [*practicum traditionis*], an act that must be composed for them by the *protoanthypatos* and notary of our Serenity, George Machitarios, that also will be firm and stable and inviolable in everything that is contained in it; and [the same] should be deposited in the same archive in which this chrysobull of our power will also be deposited, for the purpose of knowing the gifts to the rightful subjects of our Majesty, the Venetians, and for the refutation of those who will try to bother them by reason of these donations.

According to this text, an act of delivery was to be written down in a document (*praktikon traditionis*)[190] by an imperial notary named George Machitarios, and then registered, together with the chrysobull, at the corresponding office (*sekreton*). All of these formalities serve as both notification that the property has been granted to the Venetians, and as proof for those who may bring forth objections to this grant. As a result of implementing these formalities, the emperor states that everything with regard to such grants will be valid and sound once and for all and will not be disputed by anyone.[191]

[188] Borsari, *Il crisobullo*, (version B), p. 130, lines 81-89.
[189] On this verb and the legal terminology of these grants, see chapter V,2.2.
[190] This must be a translation of the Greek "πρακτικὸν παραδόσεως." For more on this term, see chapter V,2.3.
[191] "Erunt igitur semel hic diffinita omnia firma et inviolabilia et a nemine contempnenda…" in Borsari, *Il crisobullo*, (version B), p. 131, lines 89-90.

2.2.2 Sanctions

In the first chrysobull in favour of Venice in year 992, we saw that at the end of the act the emperor ordered that someone who violated the provisions of the act would face the imperial anger; however, no specific sanction was mentioned. In this act, however, the emperor does mention specific sanctions in cases where someone disobeys that which has been ordered in this chrysobull. In particular, the contravener will be forced by the *sekreton* of the *epi ton oikeiakon*[192] to pay 10 *librae* of gold, from which compensation will be paid to the Venetians fourfold the value of what has been taken away:

Si vero quispiam forte aliquid in hoc chrisobulo ordinatorum contempserit, irremisibiliter cogetur dare a secreto epi ton ikiakon auri libras decem, et ex eo solvetur ablati pretium in quadruplum.[193]

If, however, someone infringes anything that is regulated in this chrysobull, he will without any possibility of remission be forced by the *sekreton* of the *epi ton oikeiakon* to pay 10 *librae* of gold, from which there will be a compensation made to the Venetians fourfold the value of what has been taken away.[194]

In this act, the emperor orders that the Venetians will no longer pay commercial taxes and some of these taxes are specified. The emperor also mentions some officers who are not permitted to demand these taxes from the Venetians. Such officers are the *eparchos*,[195] the *parathalassites*,[196] the *eleoparochos genikos*, the *commerciarioi*,[197] the *chartularioi*[198] etc. What is strange is that in the former chrysobull from 992 the *logothetes tou dromou* became the exclusive authority regarding matters of Venetians, and in this chrysobull he is not mentioned once. This may indicate that there were one or even more Byzantine imperial acts between the two chrysobulls of 992 and 1082 that have not been preserved. However, we should perhaps take into

192 For this office, see *ODB*, vol. 3, p. 1514 and p. 1866.
193 Borsari, *Il crisobullo*, (version B), p. 131, lines 90-93 and the excerpt from the first version which follows in Borsari, *Il crisobullo*, (version A), p. 127, line 90 – p. 128, line 93: "si vero quis contemserit forsitan quid eorum que in hoc chrysobullio disposita sunt, inremissibiliter exigetur a secreto ton oikiakon aurum libras X et quantitate eius quod ablatum fuerit, ex eis persolvet in quadruplum..."
194 This translation is based on version B.
195 For this office, see *ODB*, vol. 1 p. 705.
196 For this office, see *ODB*, vol. 3, pp. 1586-87 and Christophilopoulou, *Politeuma*, pp. 432-33.
197 For this office, see *ODB*, vol. 2, p. 1141.
198 For this office, see *ODB*, vol. 1, p. 416. On the taxes and the officers, see Borsari, *Il crisobullo*, (version B), p. 129, line 54 - p. 130, line 58.

consideration that the *logothetes tou dromou* was not involved in collecting taxes.

The office of the *sekreton* of the *epi ton oikeiakon* is only mentioned here as the authority that exacts the fine; this office is not competent in general for matters referring to Venetians.[199] The fact that in this act the fine is paid to the *sekreton* of the *epi ton oikeiakon* corresponds to the practice of that time, as is shown in corresponding sources. For example, in a chrysobull of Alexios I Komnenos to the monastery of Lavra in 1104 it is mentioned nearly at the end that:

...ὁ πρὸς ἀθέτησιν ἀπιδὼν τῶν ἐνταῦθα διωρισμένων προστίμῳ χρυσίου λιτρῶν δέκα ὑποπεσεῖν, ἃς καὶ καταβαλεῖται πρὸς τὸ σέκρετον τοῦ ἐπὶ τῶν οἰκειακῶν...[200]

…he who infringes the grants made here will be exposed in paying a fine of 10 *litrai* of gold, which will be given to the *sekreton* of the *oikeiakon*….

In other words, there is not a special proceeding for the Venetians but the proceeding of the fines is settled as in a 'normal' case. The aforementioned passage of the chrysobull of Alexios I Komnenos to the monastery of Lavra in year 1104 is very similar to the abstract of the examined chrysobull towards Venice. In both cases, if the provisions are infringed, a fine of 10 *librae* of gold must be paid to the *sekreton* of the *epi ton oikeiakon*. However, in the case of the Venetians, the contraveners of the provisions of the chrysobull will have to pay to the *sekreton* of the *epi ton oikeiakon* a fine from which compensation will be given to the Venetians.

[199] On the duties of this officer, see Christophilopoulou, *Politeuma*, pp. 229-30 and *ODB*, vol. 3, p. 1515.

[200] *Actes de Lavra*, pp. 286-287, lines 85-87, no 55. See also *Actes de Lavra*, p. 240, line 56, no 43, where a similar provision is inserted, namely that a fine of 10 *litrai* of gold must also be paid to the *sekreton* of the *ton oikeiakon* if the relevant provisions are violated (…καὶ δέκα λίτρας χρυσίου ἀσυμπαθῶς καταθέσθαι εἰς τὸ τῶν οἰκειακῶν σέκρετον...).

3. The chrysobull of John II Komnenos in 1126 (Reg. 1304)

3.1 Introduction

In 1119 the newly elected doge of Venice, Domenico Michiel, sent envoys to Constantinople to ask for a ratification of the privileges of Alexios I granted to Venice. The new emperor, John II Komnenos, refused to ratify any such privilege. In the years that follow, the Venetians attacked by sea mainly islands, such as Rhodes, Samos, Lesbos, Kephalonia but also Methone and other Byzantine territories.[201] In 1126, the emperor had no other choice; he granted a chrysobull in favour of Venice by which he ratified the privileges granted by Alexios I in 1082.[202] The chrysobull of John Komnenos in 1126 is preserved only in Latin in two slightly different versions, which were inserted in the two chrysobulls.[203] As stated above, the act mainly ratifies the former chrysobull of Alexios I in year 1082. After the ratification of this chrysobull, which is incorporated in full, there are again some new provisions about the grants given to the Venetians, as well as their exemption from the custom tax.[204] There are also indirect references to a second privilege act of John Komnenos in the same year in the form of a decree (*praeceptum*).[205] No such act, however, is preserved today but indications of its existence are found in a chrysobull by Manuel I Komnenos[206] and in a chrysobull by Isaac II Angelos.[207] It is mentioned that by this decree the emperor also allowed the Venetians to trade freely in Crete and in Cyprus. As a result, the Venetians gained better access to the markets of Syria and Palestine.

[201] For a detailed account of the historical facts with references to both Byzantine and Venetian sources, see Kretschmayr, *Geschichte*, pp. 224-230 and Nicol, *Byzantium and Venice*, pp. 77ff.
[202] Reg. 1304. See Lilie, *Handel und Politik*, pp. 17-22.
[203] The chrysobulls issued by Manuel I Komnenos (Reg. 1365) and by Isaac II Angelos (Reg. 1576). The first version begins with "solet multociens…", whereas the second version begins with "consuevit sepe...". See Pozza and Ravegnani, *I trattati*, pp. 51-56, line 1, no 3.
[204] At this point many problems of interpretation have arisen regarding the tax of *kommerkion*; see among others: Danstrup, *Indirect Taxation*, pp. 145-47; Antoniadis-Bibikou, *Recherches*, p. 111, Lilie, *Handel und Politik*, pp. 17ff. and Oikonomides, *Byzantine State*, especially pp. 1050-1055.
[205] Reg. 1305.
[206] Reg. 1365.
[207] Reg. 1576. See Dölger, *Regesten*, p. 190 (Reg. 1305).

3.2 Legal Issues

The chrysobull of John II Komnenos in 1126 mainly ratifies former Byzantine imperial privileges granted to the Venetians. However, in two parts of the text there is information regarding an oath required of the Venetians envoys. Just before the chrysobull of Alexios I Komnenos is inserted, we read:

(version D)…habeant assiduam pietatis nostre indulgentiam per presens chrisobulum eis collatam, pollicentibus et rursum ex toto corde pro Romania pugnare et pro omni christiano ordine sub nostra existente clementia, quedamque spetialia servitia scripta per conventiones celsitudini nostre et Romanie observare pollicitis, secundum quod conventio a nuntiis eorum facta de his latius narrat. Et quoniam petierunt idem chrisobulum ipsis factum beati imperatoris, domini et patris imperii nostri corrigi sibique iterum dari,
[...] clementia nostra eos exaudivit precepitque imviolabiliter hoc transcribi et hic poni, sic habens:...[208]

...let them [the Venetians] have the constant kindness of our Piety which is granted to them by the present chrysobull; while they promise that they will again wholeheartedly fight for Romania and for the whole Christian world that is reigned by our Clemency,[209] and promise that they will comply with certain special services which have been written down in conventions of our Majesty and of Romania, according to what is set forth in greater detail in a convention by their envoys. And because they have asked that the chrysobull which has been made for them by the blessed emperor, the *kyr* and father of our empire would be repaired and be given to them again, [...], our Clemency has granted them this and has ordered to copy this and place it here, as follows: (the chrysobull of Alexios I follows, Reg. 1081).

It is interesting to note that this excerpt in the other version reads as follows:

> (version C)..., set perpetuo indulgentiam haberent imperii mei, que per presens chrysobullion donata est sicut promittentibus rursus quoque toto animo pro Romania pugnare et omni sub imperio meo christianico ordine. Simul autem et propria quedam servitia per scriptum et iusiurandum convenientibus servire imperio meo et

[208] From the second version (version D, as it has been referred to by the editors), which was inserted in the chrysobull of Isaac II Angelos in 1187, Reg. 1576, Pozza and Ravegnani, *I trattati*, p. 52, line 18 – p. 53, line 13, no 3.

[209] This point reminds us strongly of C. 1,1: "Cunctos populos, quos clementiae nostrae regit temperamentum, in tali volumus religione versari, quam divinum Petrum apostulum tradidisse Romanis religio…"[Translation from *AJC*: We desire that all the nations who are governed by the moderate rule of Our Clemency shall practice that religion which was carried by the divine Peter to the Roman People…]

Romanie, velut facta ab apocrisariis eorum symphonia latius de his tractat."[210]

First of all, the translator of the latter text often uses Greek words with Latin letters. In this text for example he uses the word *apocrisarii* to describe the envoys and the word *symphonia* for an agreement, whereas the translator of the other version uses the Latin words *nuntii* and *conventio* respectively.[211] Perhaps the translator of the latter version (C) was a Greek native. On the other hand, it could have been a Latin native speaker who did not understand the words. Moreover, the translator of version C of the act uses the term *iusiurandum* to express that an oath has been undertaken, whereas in version D this is expressed by *observare pollicitis*. We come across the term *iusiurandum* further on near the end of the act, which is the second point of the act in which we find information about a legal oath; there the term *iusiurandum* is used in both versions. Parallel versions of this section of the act are quoted below, and appear next to the translation I suggest:

Version C:	Version D:	
Verumtamen debent et Venetici ea, que per factam scripto conventionem a legatis eorum promissa sunt iureiurando imperio meo, firma servare incorrupta. In quo erunt eorum, que per presens chrysobulion donata sunt ipsis iura, donantes sine ablatione in evum omne, ut firmum et sesurum inesse presens crysobulion….[212]	Verumtamen et Venetici debent ea, que per conventionem scripto peragendam a nuntiis eorum clementine nostre sunt iureiurando promissa, et firma et inviolabilia observare. Super hoc erunt ipsi iuris sibi collati per presens chrisobulum sine ablatione donantes, per seculum omne firmo et inviolabili presente chrisobulo existente.[213]	However, the Venetians must also keep firm and stable the promises that have been made by their envoys by a legal oath [*iureiurando*] to my Majesty, which must be laid down in writing. In this (version C) / In addition (version D) they will be given all the rights that have been granted to them in the present chrysobull without disturbance, so the present chrysobull will be firm and secure for all time to come.

[210] From the first version of the act, as inserted in the chrysobull of Manuel I Komnenos in 1147, Reg. 1365, Pozza and Ravegnani, *I trattati*, (version C, as it was named by the editors) p. 52, line 20 – p. 53, line 6, no 3.

[211] Another example is the word *philotimia*, which we have seen in the first version (C), whereas in the second version (D) it is translated as *beneficium*. See Pozza and Ravegnani, *I trattati*, p. 53, line 21 (version C) and line 20 (version D) respectively, no 3.

[212] From the first version of the act, as inserted in the chrysobull of Manuel I Komnenos in 1147, Reg. 1365, Pozza and Ravegnani, *I trattati*, (Version C), p. 55, line 17 – p. 56, line 1, no 3.

[213] From the second version of the act, as inserted in the chrysobull of Isaac II Angelos in 1187, Reg. 1576; Pozza and Ravegnani, *I trattati*, (Version D) p. 55, line 15 – p. 56, line 25, no 3.

In this text, the emperor orders that the Venetians must keep stable and inviolable that which their envoys have sworn by legal oath to the emperor and that this agreement has to be in writing. If the Venetians comply, adds the emperor, the grants will be given to them without disturbance. The Venetians envoys promise on behalf of Venice that this agreement will be valid. Unfortunately, the actual text that the envoys had to promise is no longer extant.[214] The oath of the envoys is connected to their duties to negotiate and reach agreements with the Byzantine emperor on behalf of the Venetian Republic. In other words, when the Venetian envoys promise that the agreed provisions will be upheld, such as they do here, it means that the city of Venice is obliged to respect and follow what is agreed by her envoys and the Byzantine emperor. This is clearly expressed near the end of the act, where the emperor mentions that the Venetians have to observe the written agreement upon which their envoys have made a legal oath to the emperor.[215] Envoys who were sent to Constantinople for negotiations were carefully instructed by the authorities of Venice as to what they would negotiate and agree to. Some "letters of instruction" have been preserved that are addressed to the envoys sent to Constantinople by the Italian cities in order to reach an agreement with the emperor.[216]

[214] We will see such texts inserted in later Byzantine imperial acts towards the Italian cities.
[215] See above the text from "Verumtamen et Venetici ... inviolabilia observare."
[216] See chapter V,5.

4. The chrysobulls of Manuel I Komnenos in 1147 (Reg. 1365) and 1148 (Reg.1373)

4.1 Introduction

In the summer of 1147 Manuel I Komnenos sent a diplomatic mission[217] to Venice in order to request help in fighting the threat posed by Roger II, king of Sicily.[218] Some months later, in October 1147, he issued a chrysobull as a reward to the Venetians for their help. This chrysobull is preserved only in Latin, and appears in two versions.[219] Appearing at the top of the first version (B), before the text of the chrysobull even begins, is the title: "Privilegium pacti imperatoris constantinopolitani". This title is included by the Venetians themselves and it is interesting to see how they refer to the Byzantine emperor, who is described as the "emperor of Constantinople." In the beginning, the emperor praises the Venetians for their help and then ratifies the privilege acts of Alexios I Komnenos[220] and his son John II,[221] which are both inserted. It is clear from the text that the chrysobull was made following a petition of the Venetians.[222] One year after this privilege act, the emperor granted another chrysobull to the Venetians.[223] This chrysobull has been preserved only in Latin, as it was incorporated into the chrysobull[224] of Isaac II Angelos and begins: "Si eos, qui fide et devotione optimi sunt...".[225] In this chrysobull, the emperor praises the Venetians for their help in the war against Roger II, king of Sicily and extends their district in Constantinople.

---

[217] Reg. 1356.

[218] For a detailed account of the historical context, see Kretschmayr, *Geschichte*, pp. 232ff. and Nicol, *Byzantium and Venice*, pp. 84ff.

[219] See Pozza and Ravegnani, *I trattati*, p. 60, no 4, (versions B and C). Version C is preserved as inserted in the chrysobull of Isaac Angelos II (Reg. 1576); see also Dölger, *Regesten*, p. 212 [It is possible that on this page in the description of how Reg. 1365 is preserved under - **B**, there is an error: instead of Reg. 1578 it should be Reg. 1576].

[220] Reg. 1081.

[221] Reg. 1304.

[222] "Et ubi hoc imperialis benivolentie et voluntatis, non eis ianuam opilabimus, nec auditum eis serabimus, verum letius eos aspitiemus et peticionem eorum perficiemus..." Pozza and Ravegnani, *I trattati*, (version C), p. 61, lines 17-22, no 4.

[223] Reg. 1373.

[224] Reg. 1577. It is possible that on p. 215 of Dölger, *Regesten* in the summary of Reg. 1373, there is a mistake regarding the number of the Reg. of Isaac II Angelos; namely instead of Reg. 1578 it should be Reg. 1577.

[225] For additional editions, see Dölger, *Regesten*, p. 215.

4.2 The chrysobull of 1147

This act ratifies former imperial acts. Reference is made to an oath of the Venetians. In particular, immediately after the ratification of both chrysobulls, it is mentioned that the Venetians, having made oaths, will honor the obligations of loyalty and service which they owe to the emperor and to Romania by their own acts clearly and properly.[226] We are also informed that the Venetian envoys, present in Constantinople, have made a request to the emperor to obtain a decree that would allow the Venetians to trade freely in the islands of Cyprus and Crete such as former emperors had allowed.[227] Finally, near the end of the chrysobull, the emperor confirms that they are allowed to trade in the islands of Cyprus and Crete without paying the tax *kommerkion*, and makes another reference to the fact that the Venetians have made a promise.[228]

4.3 The chrysobull of 1148

4.3.1 Granting immovable property

As mentioned above, by this act the emperor extends the Venetian district in Constantinople. Detailed information is also given regarding the formalities of the grant.

...largitur eis imperium nostrum per presens chrisobulum suum que petierunt, habitacula et libera loca et littoralem scalam, que expresse	…our Majesty grants to them by the present chrysobull what they have requested, the houses and free places and the landing stage (*scala*) on the

[226] "Venetici autem solita sibi sacramenta facientes observabunt fidem et servitutem, quam nostre celsitudini debent et Romanie, ipsis operibus puram et vere rectam…" in Pozza and Ravegnani, *I trattati*, (version C), p. 63, lines 15-20, no 4.

[227] "Quoniam vero, ut relatum fuit clementie nostre a nunciis Veneticorum in magna urbe presentibus, impetravere Venetici preceptum quidem inter imperatores semper memorandi imperatoris, domini et patris imperii nostri, licentiam ipsis largiens sine prohibitione et per insulas negotiandi, videlicet Ciprum et Cretam..." in Pozza and Ravegnani, *I trattati*, version C, p. 63, line 20 – p. 64, line 4, no 4. In the other version (B), which is the earliest, instead of *magna urbe*, the word *Megalopoli* is mentioned. In the first version, concerning the word *Megalopoli*, the editors note that in one of the manuscripts the word *megapoli* appears. The city that the translators refer to is undoubtedly Constantinople.

[228] "…clementia nostra ob fidem et servitutem, quam erga sublimitatem nostram exhibent et deinceps exhibere pollicentur, huiusmodi peticionem eorum exaudiens concedit et precepit, sine prohibitione per manifestas insulas, Ciprum videlicet et Cretam eos negotiari, nemine quicquam ab eis exigere presumente horum gratia, et sine commerciis ubique terrarum imperii nostri custodiri secundum superius scriptas conditiones..." in Pozza and Ravegnani, *I trattati*, (version C), pp. 64, line 20 – p. 65, line 7, no 4.

numeranda et scribenda sunt in eo, quod iussum est fieri, practico traditionis eorum corporalis ab adesimotato[229] Epyphanio Tuglica, certificari debente per superscriptionem familiaris hominis celsitudinis nostre Ioannis Pepagomeni et sterni in congruis secretis, in quibus et presens nostre serenitatis chrisobulum sterni debet... [230]

shore, which have to be specifically enumerated and written down in this *praktikon of corporal delivery* of them, which has been ordered to be made, by the *desimotatos* Epiphanios Glykas (Tuglikas) and which has to be certified by a superscription of the *oikeios* of our Majesty, John Pepagomenos and has to be registered at the competent *sekreta*, to which this chrysobull of our Serenity will also have to be registered.

In particular, it requires that the areas which the emperor grants to the Venetians must be enumerated and recorded in an act of delivery (*practicon traditionis corporalis*) by the *desimotatos* Epiphanios Glykas (Tuglikas); this act was then to be ratified by a superscription (πρόταξις) by the imperial officer John Pepagomenos and registered together with the chrysobull at the corresponding competent imperial office (*sekreton*). In the text that follows, a long, precise description of the area that is granted is inserted; this was also to be included in the act of delivery.[231]

In comparing the formal procedures required to validate this grant to those required by the grant of Alexios I Komnenos in 1081, we find that in both cases an act of delivery (*praktikon paradoseos*) was to have been made by an imperial official and registered at the corresponding imperial office. The difference between the two acts regarding the way the grants were performed is that the grant in this act seems to have been subject to stricter procedural formalities. In this grant, not only was an act of delivery (*praktikon paradoseos*) to be made, but it was also to be ratified by another imperial officer who was required to mark it with a so-called *superscriptio*, which must be the translation of the Greek word "πρόταξις". Byzantine documents could be signed on the top of the document (πρόταξις) and at the end (ὑπόταξις) of it.[232]

In Byzantine acts of that time, we also come across the word "ὑποσημασία" or "ὑποσημείωσις" in matters dealing with the ratification of a document. This occurs, for example, in the chrysobull of Alexios I of 1084 by which he confirms to Leo Kephalas property in the area of Mesolimna.[233]

[229] Gastgeber's suggestion of "a desimotato" instead of "ab adesimotato" makes more sense because as Gastgeber explains, it probably is a letter to letter translation of the Greek "δεσιμώτατος." See Gastgeber, *Übersetzungsabteilung*, vol. 3, no 27, p. 180 (Apparat, 52).

[230] Pozza and Ravegnani, *I trattati*, p. 71, line 25 – p. 72, line 6, no 5.

[231] "Determinatio igitur eorum, que per chrisobulum presentis scripti eis collata sunt, habet sic: Incipit ab ipsa Vigla...etc." in Pozza and Ravegnani, *I trattati*, p. 72, lines 8-10, no 5.

[232] A characteristic example from the *Actes de Lavra*, p. 314, line 66, no 60: "Νικηφόρος πρόεδρος ὁ Κεφαλ(ᾶ)ς προέταξα καὶ ὑπέταξα".

[233] "Ταῦτα τοῦ δωρεαστικοῦ ἐνυπογράφου πιττακίου τῆς βασιλείας μου διοριζομένου, ὁ ῥηθεὶς βεστάρχης Κωνσταντῖνος καὶ λογαριαστής, δι' ἀποστολῆς ἑνὸς τῶν ἐξυπηρετουμένων αὐτῷ

Likewise, at the end of an act of sale in the year 941, it is recorded that as a guarantee, the act is signed and sealed.[234] In the *Basilica* it is mentioned that the word "ὑποσημανθὲν" means that the text is signed and that in the old times the word "ὑποσημείωσις" was used instead of the word "ὑπογραφή" (= signature).[235] In referring to this provision of the *Basilica*, the commentator of the *Ecloga Basilicorum* explains that there is a difference between the terms "σημείωσις", "παρασημείωσις" and "ὑποσημείωσις";[236] and he adds some information about how this term was used in imperial privilege acts.[237] It is interesting to note that in the Vulgate translation of the New Testament the word *superscriptio* is a translation of the Greek word "ἐπιγραφή." However, in legal texts of the 11th and 12th centuries, the word "ἐπιγραφή" is used in connection to a title of a text, probably meaning the heading.[238] In any case, the word *superscriptio* exists in Latin and means an inscription, a superscription and the verb *superscribo* means to write upon or over[239] and here it is used to translate the Greek "πρόταξις".

Another difference between the grant of Alexios I Komnenos in favour of the Venetians and the grant mentioned in this chrysobull is that in the latter act, the word *corporalis* is mentioned in referring to the *traditionis* as

---

Βάρδα δισυπάτου, ἐνήργησε τὰ κεκελευσμένα καὶ πρακτικὸν ἐξέθετο παραδόσεως τῇ ἀυτοχείρῳ τούτου ὑποσημασίᾳ καὶ τῇ διὰ μολίβδου συνήθει σφραγῖδι πεπιστωμένον, λεπτομερῶς καὶ πρὸς ἀκρίβειαν παριστῶν ἅ δὴ καὶ παρέδοτο πρὸς τὸν Κεφαλᾶν", in *Actes de Lavra*, p. 246, lines 18-24, no 45.

[234] "...διὸ καὶ πρὸς ἀσφάλειαν ὑμῶν ἐγράφη καὶ τῇ οἰκειοχείρῳ ὑποσημειώσει καὶ τῇ ὑποβολῇ τῆς σφραγῖδος βεβαιωθὲν ἐπεδόθη..." in *Actes de Lavra*, pp. 96-97, lines 16 -17, no 3.

[235] "'Ὑποσημανθὲν λέγεται τὸ ὑφ' ἑτέρου ὑπογραφόμενον· οἱ παλαιοὶ τῷ τῆς ὑποσημειώσεως ὀνόματι ἀντὶ ὑπογραφῆς χρῆσθαι εἰώθεισαν", B. 2,2,37 = D. 50,16,39 (BT 26/14-18): "'Subsignatum' dicitur, quod ab aliquo subscriptum est: nam veteres subsignationis verbo pro adscriptione uti solebant.." [Translation from Watson, *Digest*, vol. IV, p. 936: "Subsignatum" means something which is signed by someone: for people used to use the word "subsignatio" instead of signature.]

[236] *Ecloga Basilicorum*, p. 27, line 27ff. (comment on B. 2,2,37 pr. = D. 50,16,39pr)

[237] He mentions that the word "ὑποσημᾶναι," which means to place a signature, was used in the past but also in chrysobulls in his time and that after the whole text of the chrysobull, it is written that "the present chrysobull should be observed firmly and that upon it our respectful and blessed power has placed its signature"; he adds that the verb "ὑπεσημήνατο" is used here instead of the verb "ὑπέγραψεν". "Τοῦτο γοῦν, ὅτι "ὑποσημᾶναι" λέγεται τὸ ὑπογράφεσθαι, δηλοῦται καὶ ἀπὸ τῆς ἔκπαλαι καὶ μέχρι τοῦ νῦν προστιθεμένης ἐν τοῖς χρυσοβουλλίοις γραφῆς· μετὰ γὰρ τὸ ὅλον ὕφος γράφει τάδε, ὡς "ὁ παρὼν χρυσόβουλλος λόγος ὀφείλει φυλάττεσθαι βέβαιος, ἐν ᾧ καὶ τὸ ἡμέτερον εὐσεβὲς καὶ θεοπρόβλητον ὑπεσημήνατο κράτος", καὶ χρῆται τῷ ῥήματι τῷ "ὑπεσημήνατο", ἀντὶ τοῦ "ὑπέγραψεν." in *Ecloga Basilicorum*, p. 28, lines 32-36 (comment on B. 2,2,37 pr. = D. 50,16,39pr).

[238] For the term "ἐπιγραφὴν τοῦ τίτλου", see for example BS 2137/7 (sch. F 4 ad B. 29,5,41 = C. 5,15,1); *Ecloga Basilicorum*, p. 297, lines 1 and 12 (comment on B. 7,11,3. = C. 2,16,2). I have checked how the term ἐπιγραφή and its derivatives are used in the *Basilica* (Text and Scholia) and the *Ecloga Basilicorum*.

[239] See also *Medieval Latin Dictionary*, p. 1314.

follows: *practico traditionis eorum corporalis*.[240] In several Greek documents we come across the term "σωματικὴ παράδοσις". This term is also connected, in general, with the role of a document for a valid contract in Byzantine law, and brings us to the discussion about the delivery "by a document" (*traditio per cartam*).[241] In this chrysobull, not only is the order given for drawing up a *praktikon* (as in the former chrysobull of Alexios I Komnenos), but this time the content of the *praktikon* is also inserted. After the imperial order, a text is inserted that includes the exact boundaries of the immovable property granted to the Venetians. In particular, it is ordered that a *praktikon traditionis corporalis* should be made by the *desimotatos*, named Epiphanios Glykas (Tuglikas), and has to be ratified by the imperial officer John Pepagomenos. No reference is made to an additional condition for the granting of the property, such as a formal delivery of the act.

Regarding the names that are mentioned, there is no reference to the status of either person, but I think that the most plausible is that the first is a notary and the second a judge. The name John (Ioannes) Pepagomenos is also mentioned in other acts of that time. In another act of Manuel I Komnenos, by which he confirms a donation to the monastery of Patmos, it is mentioned that John Pepagomenos has also sealed the act.[242] The family of Pepagomenos included persons that held many administrative offices throughout the 11th century.[243] I have not, as yet, found any additional references to Epiphanios Glykas (Tuglikas) in other documents of that time. The name "Epyphanios Tuglicas", as it is mentioned in the chrysobull sounds rather strange. The correct name should have been Epiphanios Glykas. The Tuglicas must derive from the Greek name in genitieve: Ἐπιφανίου τοῦ Γλυκᾶ.[244]

Provided that the *praktikon traditionis* was made and ratified, the fact that the Venetians were granted these areas is also proved by the following emperor's order: no objections could be raised in future regarding this property. In particular, after providing a detailed description of the granted areas, the emperor confirms these grants and adds that no one can raise any action against them regardless of whose rights they were connected, whether ecclesiastical, public or private, or a church or a monastery:

---

[240] In Pozza and Ravegnani, *I trattati*, p. 71, line 27, no 5.

[241] See Zepos, *Paradosis*, pp. 199-242; Papagianni, *Nomologia*, pp. 56-58. On this issue, see chapter V,2, where a comparative approach to the grants of immovable property given to the Italians will take place with reference to Byzantine legal practice as well.

[242] "..τὸ μηνὶ Μαρτίῳ, ἰνδικτιῶνος η' δι' ἐρυθρῶν γραμμάτων τοῦ κραταιοῦ καὶ ἁγίου ἡμῶν βασιλέως καὶ ἡ διὰ κηροῦ συνήθης σφραγίς· εἶχε δὲ καὶ τὸ διὰ τοῦ Πεπαγωμένου Ἰωάννου καὶ τὸ κατεστρώθη ἐν τῶ σεκρέτῳ τοῦ μεγάλου λογαριαστοῦ, κατὰ μῆνα Ἀπρίλιον, ἰνδικτιῶνος η', διὰ Θεοδώρου τοῦ Σπονδίλη..." in Vranousi, *Patmos*, p. 192, lines 23-25, no 19.

[243] *ODB*, vol. 3, p. 1627.

[244] See also the observation of Gastgeber that perhaps this name is mistaken for Michael Glykas, in Gastgeber, *Übersetzungsabteilung*, vol. 3, no 27, p. 183, commentary, lines 52-53.

...habebunt[245] Venetici hec, devotionem et fidem, quam imperio nostro et Romania debent, servantes, secundum quod et per ea que prius adepti sunt chrisobula hanc servare tenentur, cuiuscumque iuris sint, sive ecclesiastici iuris sive rei publice sive privati sive sancte domus vel monastici, nulla actione locum exercendi habente contra eos gratia horum.[246]

...the Venetians will have these, if they continue to observe the devotion and loyalty which they owe to our empire and Romania, in accordance with what they were bound to observe in the chrysobulls that they have been given earlier regardless of legal status, whether they are of ecclesiastical status or public or private or holy temples or monasteries, while no action may be raised against them on account of these.

This provision recalls many other provisions that we have already examined in the chrysobull of emperor Alexios I Komnenos in 1082.[247] Both chrysobulls refer to all possible persons or institutions that could be connected to the granted areas. The emperor wants to make clear that anyone who was connected to these areas is not allowed to raise any objection whatsoever regarding the imperial grant. Here we see that the term *actionem exercere* is used to indicate that no legal claim can be exercised; this is the same term that was also used in one of the versions of the chrysobull of Alexios I Komnenos in 1082.

[245] The verb *habere* is vague. On the grants of the immovable property by the Byzantine emperors to the Italians and the question of what exactly the Italians received in this case, see chapter V,2.
[246] Pozza and Ravegnani, *I trattati*, p. 74, lines 14-19, no 5.
[247] Reg. 1081 in chapter II, 2.

4.3.2 Sanctions

Here is the corresponding passage of the chrysobull of 1148 by Manuel I Komnenos regarding sanctions:

Si vero quispiam forte infestationem eis induxerit gratia convicendi aut auferendi quicquam eorum, que eis ut dictum est data sunt, inremissibiliter multabitur a secreto epi ton ykiakon in decem libris auri, firmo et rato existente presente chrisobulo verbo clementie nostre.[248]	If however, somebody were to attack them in order to abuse them or to take away any of those things that have been given to them, as has been said, then he will be punished without mercy by the *sekreton* of the *epi ton oikeiakon* by having to pay 10 *librae* of gold, so long as the present chrysobull of our Clemency remains firm and valid.

By comparing the sanctions in this chrysobull to those in the chrysobull of Alexios I Komnenos in 1082, we observe that there is a resemblance but also a difference. In both chrysobulls it is ordered that in case of violation of the provisions a fine of 10 *librae* of gold will be paid to the *sekreton* of the *epi ton oikeiakon*. However, in the chrysobull of Alexios I Komnenos, it is also ordered that the Venetians will receive compensation from this fixed fine, which corresponds to the fourfold value of what has been taken away.[249]

[248] Pozza and Ravegnani, *I trattati*, p. 74, lines 19-23, no 5.
[249] See Reg. 1081 in chapter II,2.

The Angelos dynasty

5. The chrysobulls of Isaac II Angelos in 1187 (Reg. 1576, Reg. 1577 and Reg. 1578)

5.1 Introduction

Despite the chrysobulls which Manuel had granted to the Venetians in 1147 and 1148, relations between Byzantium and the Republic of Venice were violently disrupted in 1171, when he ordered the confiscation of the goods of all the Venetians living within the Byzantine Empire, as well as their imprisonment.[250] In 1171 he had sent letters to all parts of the empire ordering the arrest of all Venetians and the confiscation of their goods.[251] These letters have not been preserved but there are indirect references to them in Byzantine and Venetian sources.[252] In 1179 the emperor signed a peace treaty with the Venetians[253] for which we have only indirect references, by which the Venetians regained all former privileges and were awarded compensation of 15 *kentenaria*[254] which was to be paid to them.

The next Byzantine emperor, Isaac II Angelos, tried to restore the relations of the empire with Venice; therefore, throughout his reign he granted five privilege acts to the Venetians. In February of 1187 he issued three chrysobulls which are preserved only in Latin copies.[255] It is worth mentioning that the Venetians entitled the first chrysobull[256] "Privilegium Ysaakii constantinopolitani imperatoris", the second[257] "Privilegium confirmationis de concessione imperatoris constantinopolitani" and the third[258] "Privilegium

[250] There has been much discussion on the reasons behind this action. See, for example Danstrup, *Manuel*, pp. 195-219, especially pp. 205-211 and Day, *Manuel*, pp. 289-301, especially pp. 293-295. For a detailed account of the historical context, see Kretschmayr, *Geschichte*, pp. 253ff. Christophilopoulou, *Byzantine History*, pp. 403ff. and Nicol, *Byzantium and Venice*, pp. 96ff.
[251] Reg. 1500.
[252] See, for example, the information given by John Kinnamos in Kinn. p. 280, lines 14-17 and Niketas Choniates in Nik.Chon., pp. 171-2, lines 60-64.
[253] Reg. 1532.
[254] For the term *kentenarion*, see Morisson, *Byzantine money*, pp. 920 and 951 with further bibliographical references.
[255] Pozza and Ravegnani, *I trattati*, pp. 84-87, no 6 (Reg. 1576), pp. 88-89, no 7 (Reg. 1577) and pp. 90- 99, no 8 (Reg. 1578). For older editions of these three chrysobulls, see Dölger, *Regesten*, pp. 292-294.
[256] Reg. 1576.
[257] Reg. 1577.
[258] Reg. 1578.

Ysachii imperatoris Romanorum".[259] The term *imperatoris Romanorum* is used once again in the text of the third chrysobull,[260] which is the first chrysobull that is clearly a treaty. It is interesting to note that this term is used in this chrysobull also at the point where the obligations of the Venetians are described by themselves. That the part of the chrysobull which refers to the obligations of the Venetians was formulated by the Venetians themselves, is shown by the term *imperio eorum* which is used often and not, for example, a term like *imperio meo*.[261] In other words, the chrysobull here is not formulated in a subjective way. Moreover, when reference is made to the Venetian fleet, the expression *stolus noster* is used, which is another indication that it is the Venetians who 'speak' here.[262] In the first chrysobull of 1187,[263] the emperor refers to the help that the Venetians offered to former Byzantine emperors and ratifies the chrysobulls of Manuel I,[264] John II[265] and of Alexios I Komnenos.[266] By the second chrysobull,[267] Isaac II Angelos ratifies the chrysobull of Manuel I Komnenos from 1148.[268]

Most interesting is the third chrysobull of 1187[269] because it is the first Byzantine act in which the duties of the Venetians are described in detail.[270] In the beginning of that act, the emperor refers to the Venetians' help towards Byzantium and adds that the Venetians have promised to provide their best services to the Byzantine Empire and that this has been written down in an agreement and confirmed by an oath.[271] The obligations of Venice are then included in detail, examples of which follow.[272] It is provided that in case Romania is attacked by a fleet consisting of 40 ships or more, Venice must provide 40 ships or more (up to 100) to Romania within six months; these ships will be constructed in Venice at the expenses of Romania.[273] In particular, each Venetian who supervises the construction of five ships of 140 men will be

[259] Pozza and Ravegnani, *I trattati*, p. 84, line 1, p. 88, lines 1-2, no 7 and p. 90, line 1, no 8 respectively.
[260] Reg. 1578.
[261] Reg. 1578, see for example, Pozza and Ravegnani, *I trattati*, p. 91, lines 24-25, p. 92, lines 1 and 17, no 8.
[262] See for example, Pozza and Ravegnani, *I trattati*, p. 93, lines 1 and 3, no 8.
[263] Reg. 1576.
[264] Reg. 1365.
[265] Reg. 1304.
[266] Reg. 1081.
[267] Reg. 1577.
[268] Reg. 1373.
[269] Reg. 1578.
[270] Heinemeyer, *Die Veträge*, pp. 89ff.; Lilie, *Handel und Politik*, pp. 24ff.
[271] "...devotionem ei maximam in necessariis temporibus exibentes, et ei nunc melius servicium pollicentes, sic ipsum sacramento et conventione imperio nostro corroborantes…" in Pozza and Ravegnani, *I trattati*, p. 91, lines 8-10, no 8.
[272] For the description of Venice's obligations, see Lilie, *Handel und Politik*, pp. 24ff.
[273] Pozza and Ravegnani, *I trattati*, p. 91, lines 20-25, no 8.

given the amount of 60 *hyperpyra* by the Byzantine state.[274] Oath provisions are also included here both for the Venetians who undertake the construction of ships and for the captains who sail them. It is mentioned that the emperor reserves the right to use three quarters of the number of Venetians living within Romania for the fleet, paying them the corresponding salary; however, men under the age of 20 years old, as well as men over the age of 60 years old are excluded.[275] It is also stated that the crews have to be loyal to the emperor and should fight the enemies, Christians or not, for the glory of Romania; and if territory of their enemy is occupied, it is ordered that the emperor will grant both a church and an area free from taxes to the Venetians.[276] Moreover, if the emperor cannot call the Venetians for help in time, the fleet can be equipped by Venetians living in Constantinople or nearby, namely from areas between Adrianoupolis, Abydos and Philadelphia at three quarters of the number of Venetians living there and payment of the corresponding salary.[277] Byzantine obligations are also included. The emperor renews the chrysobulls of Manuel I Komnenos and regulates matters about returning the property that had been confiscated by the former emperor in 1171 to the Venetians. In the end, it is mentioned that the included provisions have to be kept inviolate by both sides without fraud and bad intention; this is followed by the date and the usual ending of a chrysobull.

[274] Pozza and Ravegnani, *I trattati*, p. 92, line 24, no 8.
[275] Pozza and Ravegnani, *I trattati*, p. 92, lines 20-25, no 8.
[276] Pozza and Ravegnani, *I trattati*, p. 93, lines 11-22, no 8.
[277] Pozza and Ravegnani, *I trattati*, p. 94, lines 14-24, no 8.

5.2 Legal Issues

The first two chrysobulls of 1187 are of no particular interest for a legal historian since they mainly ratify the former chrysobulls.[278] However, the third chrysobull of 1187 includes three interesting elements from a legal point of view. The first issue is related to oaths and clauses of good faith, the second refers to a provision about debts, and the third concerns the confiscation of goods ordered by Manuel I Komnenos in 1171. The oath is used once again in this act as a means of confirmation and guarantee, something that is very common in medieval legal practice.[279]

The oaths of this document are divided into two categories. The first are the oaths that specific persons have to take as a way of reassuring the Byzantines that the provisions within the document will be observed. For example, the Venetians who undertake the construction of ships must swear an oath to construct them well, quickly and without malicious intention.[280] Moreover, the captains of the ships must swear upon the Gospel that they will equip each ship with 140 men, who will be paid a specified som of money (*roga*) from Romania, and that in case the men die or flee, replacements for them must be found or the money must be returned.[281] It is ordered that the captain or the captains of the ships must be Venetians and must swear to fight for Romania in good faith and without fraud.[282] Furthermore, it is stated that

[278] In the first chrysobull (Reg. 1576), the Venetians wanted to renew their oath of loyalty and this was to be written down in a document: "Verumtamen quoniam pia nostra tranquilitate in progenitorum suorum sceptra romani imperii a Deo promota Venetici dilectionem et servicium erga Romaniam sacramento renovare voluerunt, notificata in conventione, quam imperio nostro et Romanie fecerunt, capitula iuramento corroborantes, imperium equidem nostrum ad eorum servicium, quod ipsi sepe Romanie fecerunt, memoriam veniens, eos usque in finem alienos a Romania non fore iustum reputavit, suscepit..." in Pozza and Ravegnani, *I trattati*, p. 85, lines 13-20, no 6. In the second chrysobull of 1187, it is mentioned that the Venetians have asked for a confirmation of the former chrysobull of Manuel I from 1148 (Reg. 1373), by which he granted them areas in Constantinople. The emperor ratifies this former chrysobull, which is inserted as a whole, and he adds that the Venetians must also observe without deceit what they have agreed to and taken an oath upon: "Super hoc enim et presens chrisobulum verbum clementie nostre factum est, firmum et ratum permanere debens, quousque et Venetici conservabunt sine fraude et malo ingenio ea, que per conventionem et sacramentum imperio nostro debent..." in Pozza and Ravegnani, *I trattati*, p. 89, lines 8-11, no 7.

[279] For a comparative examination of the oaths found in these and other acts, see chapter V,5.

[280] "...qui et iurare debent, quod facient eas bene fieri ut unamquamque earum centum quadraginta fore rematorum et cum omni apparatu earum, cum celeritate et sine fraude..." in Pozza and Ravegnani, *I trattati*, p. 92, lines 3-5, no 8.

[281] "Item comites huiusmodi galearum debent iurare super sancta Dei evangelia, quod..." in Pozza and Ravegnani, *I trattati*, p. 92, lines 10-11, no 8.

[282] "Stolus autem noster capitaneum vel capitaneos veneticos debet habere, qui et iurare debent, quod conducent eum ad honorem imperii eorum et salutem nostri stoli bona fide et

the current doge and each of his successors must swear an oath of loyalty to the Byzantine emperor.[283] This last oath however, is different because here the doge acts as the representative of the Republic of Venice.[284]

The second category of oath refers to the oaths that we have also seen in earlier acts, namely oaths by the Venetians that were to be written down and made as a guarantee that the provisions of the chrysobull in general will be observed. For example, after the description of the duties of the Venetians, it is mentioned that they must fulfill the obligations created by this agreement and they will not violate their oath for any reason, such as "the troubles they had with Manuel" [in the sense of using this as an excuse] nor any other excuse, nor any other act; not for reasons of fearfulness or the possibility of ecclesiastical excommunication or because a figure or authority such as a bishop allows them to retract their promise, not even if he is the pope himself.[285] It is repeated that the Venetians will observe everything in good faith and without defrauding the empire.[286] The emperor continues this is all that the Venetians have promised to his empire and to Romania, by an agreement.[287] And because the doge of Venice and the Venetians have confirmed all of this by an oath, the emperor is willing to accept this sworn agreement and restore the "union" -the friendship with Romania.[288]

In the text that follows, the emperor renews the chrysobulls of the former emperors. It is clear from the abstract above that the oath taken by the Venetians on the basis of the written agreement is an absolutely necessary condition for the emperor to renew the former chrysobulls. What is characteristic in this act is also the frequent use of the legal terms "good faith" and "without fraud" (namely the expression in Latin *bona fide et sine fraude*). In this document, we come across the term *bona fide* ten times, the term *sine*

sine fraude usque ad stolum celsitudinis eorum…" in Pozza and Ravegnani, *I trattati*, p. 93, lines 1-4, no 8.

[283] Pozza and Ravegnani, *I trattati*, p. 96, lines 4-8, no 8.

[284] For more on this matter, see also chapter V,5.

[285] "Hanc itaque conventionem firmam et sacramentum firmam Venetici observabunt, et neque ob illatam eis iram semper memorandi imperatoris porphyrogeniti domini Manuelis, neque ob aliquam aliam occasionem eis factam huiusmodi sacramentum infringent, neque ob preceptum vel timorem alicuius coronatorum vel non coronatorum, neque ob ecclesiasticam excomunicationem vel absolutionem alicuius pontificum, aut ipsius pape romani…" in Pozza and Ravegnani, *I trattati*, p. 96, lines 16-22, no 8.

[286] "Igitur hec omnia Venetici observabunt bona fide et sine fraude..." in Pozza and Ravegnani, *I trattati*, p. 96, lines 22-23, no 8.

[287] "Hec quidem sunt, que Venetici imperio nostro et Romania per conventionem spoponderunt…" in Pozza and Ravegnani, *I trattati*, p. 97, lines 1-2, no 8; here we see that both the perspective and the formulation revert back to the emperor: the text is formulated in a subjective way.

[288] "Quoniam vero et per iuramentum hec eadem manifestus videlicet dux Venetie et manifesti Venetici confirmaverunt, imperii nostri clementia huiusmodi eorum conventionem iuramento corroboratam benigne recipiens, in pristinam unionem, quam cum Romania habebant, eos restituit…" in Pozza and Ravegnani, *I trattati*, p. 97, lines 3-7, no 8.

fraude seven times and the latter term in combination with *malo ingenio*, that is *sine fraude et malo ingenio* five times. We have already seen above some examples in which these terms were mentioned: the Venetians who construct the ships must promise, among other things, that they will construct them *sine fraude*; the Venetian captains promise to fight for Romania *bona fide et sine fraude*.

In this act, it seems that we have, for the first time, a very clear view of the context of the agreements between Byzantium and Venice. The imperial act clearly looks more like an agreement, a contract between two parties, than a privilege act. It is obvious that the Byzantine side is trying to legally bind the Venetians here, which is the reason why legal phraseology is so often used within the act. A general oath made by the Venetians does not suffice this time; the emperor wants to make sure that not only each group of the Venetians mentioned (the captains, the Venetians who will construct the ships, the doge), but also the Venetians as a whole will fulfill what is hereby agreed to.

At the end of the document both parties mutually agree to observe *sine fraude et malo ingenio* that which is provided in this chrysobull. These terms were used in provisions of agreements between two states at that time.[289] What is striking in this act, however, is that the terms are continuously repeated in nearly every obligation undertaken by each party, which reminds us of contracts wherein both parties have binding obligations. Another explanation on why these terms are used so often in this document could be that there is an atmosphere of mistrust between both sides and they want to be secure that the obligations undertaken will be fulfilled. Within the description of the obligations of the Venetians to Byzantium, the following provision is included:

...debitores fisci et Romeorum reddent omnia, que ex debito debent. Et si debitor non habet, unde debitum reddat, debet creditor habere iusticiam de debitore; si autem is obierit, de heredibus eius.[290]	…debtors [obviously Venetians] of the Byzantine state or of Byzantines will have to pay their full debt. If, however, the debtor cannot pay the amount of his debt, the creditor has the right to raise an action against the debtor and if the debtor has died, against his heirs.

Nearly at the end of the document, where the last obligations of the empire are mentioned, the same provision is inserted but this time with regard to Byzantine debtors:

Debitores vero Veneticorum Romei debent persolvere omne, quod ex	Byzantine debtors of the Venetians have to pay everything that they owe to Venetian

[289] See for example the treaty of Constance made between the German emperor Frederick and his son Henry VI with the Lombard League in 1183, *MGH, Friderici I. Diplomata*, pp. 72-73, no 848.

[290] Pozza and Ravegnani, *I trattati*, p. 96, lines 9-11, no 8.

debito debent creditoribus Veneticis. Si autem debitor non habuerit, unde debitum persolvat, habebit iusticiam Veneticus de Romeo; si vero ipse decessit, de heredibus eius.[291]

creditors. If, however, a debtor does not have the means to pay the debt, the Venetian can raise an action against the Byzantine; if the latter dies, then an action may be raised against his heirs.

These two abstracts are not identical as far as vocabulary is concerned[292] but their content is undoubtedly the same. Moreover, in both texts the legal term used to express the rights of the creditor in instances where the debtor does not pay off the debt is the same: *habere iusticiam*. In other words, the debtor (Venetian or Byzantine) must pay off the debt, and if he fails to do so, the creditor may raise a suit against him or his heirs in the event of his death. Nothing is mentioned about the specific judge or competent court before which the suit will be raised, which is different from what we have seen in an earlier chrysobull, where the *logothetes tou dromou* was mentioned.[293] Then the emperor orders:

…promittit per suum chrisobulum verbum […] habere et omnes districtus, quos habebant tempore illate eis ire semper memorandi imperatoris et patrui imperii nostri, domini Manuelis Comnani, ipsisque Veneticis reddi et omnes res eorum, que in palatiis et monasteriis fuerunt, et que in vestiarium intraverunt et in alia loca scripto et non scripto.[294]

…he (the emperor) allows by his own chrysobull […] that they have all the districts which they had at the time of the everlasting memorable emperor and uncle of my Majesty *kyr* Manuel Komnenos and were taken, and also that all their goods will be returned to the Venetians which were held in palaces and monasteries or that had been transferred to the imperial vestiary or any other place, whether proved in writing or not.

In the following, the emperor promises to appoint a committee whose task it is to locate the confiscated goods of the Venetians:

Set et pro rebus, que manifeste non reperientur, dabit serenitas imperii homines sufficientes, eisque precipiet, quatenus res Veneticorum studiose querant et reperiant, ac si de vestiario imperii nostri ablate essent.[295]

And for the things that manifestly will not be found, our Serenity will appoint sufficient men and he will order them how far they must carefully look for and find the things of the Venetians, as if they had been removed from the imperial

[291] Pozza and Ravegnani, *I trattati*, p. 98, lines 22-25, no 8.
[292] For example, in the first abstract the expression *debitum reddere* is used to describe the payment of the debt, whereas in the second abstract the term *debitum persolvere* is used.
[293] See Reg. 781 where the *logothetes tou dromou* is mentioned as the exclusive competent authority to judge cases regarding Venetians.
[294] Pozza and Ravegnani, *I trattati*, p. 97, lines 10-19, no 8. The Latin is here problematic and that is why I have made a rather free translation of the text. The *illate* must be *ablate*.
[295] Pozza and Ravegnani, *I trattati*, p. 97, lines 19-22, no 8.

vestiary.

In particular, for those items which are not easily found, the emperor will order able men to take on this task and instruct them to recover the goods of the Venetians just as they would if such goods had been taken from the imperial vestiary. The emperor continues that these men must swear that they will make a serious effort to find and recover these goods in accordance with the imperial order, both for the honour of the Byzantine Empire and for the benefit of the Venetians.[296] In other words, the emperor orders that the goods of the Venetians that were confiscated in 1171 must be treated, as if they were imperial goods. Moreover, the emperor wants to reassure the Venetians that the men who will locate and recover their goods will perform their task rightly and for the benefit of the Venetians. He therefore includes an extra guarantee: these men must swear an oath, as stated above. It is added that:

Et si aliquid de iis venditum est, et dixerit Veneticus fraudulenter illud fore venditum, iurabit ille qui vendidit, quod bona fide rem Venetici vendiderit et pro tanto, pro quanto eam vendere quivit, et quod nec plus inde acceperit nec accepturus est, nisi quantum dixit, si propinquus imperii nostri non fuerit. Verumtamen et de propinquis celsitudinis nostre et de aliis debet fieri cauta iusticia secundum quod deberet fieri pro rebus ablatis de vestiario imperii nostri.[297]	And if any part of the goods has been sold and a Venetian has said that this was sold deceitfully, he [the Byzantine] who has sold it has to swear that he sold the good of the Venetian in good faith and for as much as he has been able to sell it and that he has not received more for it nor is going to receive anything more than the amount he has said, if he is not someone close to the emperor. However, both relatives of our Majesty and others must be dealt with in the same legal proceedings that have been guaranteed from my part, just as would happen if things had been taken from the imperial vestiary.

It is not entirely clear how this passage is connected to the legal position of the Venetians. For example, it is not mentioned in the text that the person who has sold the good has to give the money he received to the Venetian. This chrysobull of the emperor seems rather more like a treaty, a contract between two parties with obligations on both sides. Legal phraseology is continuously used within this document as a means of legally binding the parties, whereas oaths are used in many parts as a means of reassuring both parties that what is agreed to, will be performed and observed. The efforts of Isaac II Angelos to restore the relations of the empire with the Republic of

[296] "Qui et iurare debent, quod secundum preceptum imperii nostri studebunt invenire et accipere huiusmodi res ad honorem clementie nostre et utilitatem Veneticorum." in Pozza and Ravegnani, *I trattati*, p. 97, lines 22-25, no 8.
[297] Pozza and Ravegnani, *I trattati*, p. 97, line 25 – p. 26, line 5, no 8.

Venice are obvious. The fact that the property confiscated in 1171 by order of Manuel I Komnenos will be returned to the Venetians based on this chrysobull is a rather extraordinary measure of the emperor; one that will have caused legal uncertainty for the Byzantines. It had been sixteen years since the confiscation of Venetian goods, and it would have been difficult, if not impossible to discover where that property had ended up. Most probably, some of the goods of the Venetians had changed hands more than once. Let as assume that, after confiscation, one such item was sold to someone and then sold on to yet another party. Legal questions arise here concerning issues of good faith and prescription. For example, if the state had sold the item to a third party and the latter purchased the item in good faith, it is likely that after a period of sixteen years the person in possession of the Venetian good considers himself the owner. Moreover nothing is mentioned about compensation from the state to those parties required to return items that had been confiscated from the Venetians.

The emperor seems determined to locate the property of the Venetians and return it to them and for that reason, as we saw earlier, he even appoints a special committee assigned the task of tracing that property. The fact that all goods must be returned to the Venetians, including goods that are in the palace, in monasteries, in the imperial environment or in any other place, raises questions about the procedure of the confiscation itself, namely whether the Venetians' goods were actually confiscated by the state or by some persons appointed by the state. There are only indirect references about the order of the confiscation of Manuel I Komnenos in 1171. While Byzantine historians refer to this incident, they do not focus on the legal aspect of the confiscation of the goods. According to the Byzantine historian John Kinnamos:

...ὑπὸ τοῦτον τὸν χρόνον καὶ Οὐεννέτους, ὅσοι ἐν τε Βυζαντίῳ καὶ ταῖς ὅπου δήποτε Ῥωμαίων ᾤκηνται χώραις, δημοσίαις φρουραῖς παραπέμψας τὰς οὐσίας ἀναγράπτους εἰς τὸ δημόσιον ἐποιήσατο.[298]

...and in this year he also sent the Venetians who were living in Byzantium and all the other places of the Romans, to public prisons and confiscated their properties.

Another important testimony concerning the order of Manuel I Komnenos to arrest the Venetians and confiscate their property is given by Niketas Choniates:

...γράμματα ἐφοίτων κατὰ πᾶσαν ἐπαρχίαν Ῥωμαϊκὴν τὴν τῶν Βενετίκων κατάσχεσιν ἐπιτείνοντα καὶ τὴν ἡμέραν διασημαίνοντα, καθ' ἣν ἔδει τοῦτο γενέσθαι καὶ τὰ ἐκείνων ἐσεῖσθαι δημόσια

...they sent letters to every Roman prefecture ordering the arrest of the Venetians and indicating the day when this was to happen and when their things

[298] Kinn., p. 280, lines 14-17.

χρήματα.[299] were to be sent to the fisc.

Because of the lack of information about the legal procedure behind confiscation, conclusions regarding the way the Venetians' goods were confiscated cannot be made. Moreover one has to take into account that, at that time, the concept of confiscation by the state must have been different from that of today.

[299] Nik.Chon., pp. 171-2, lines 61-64.

6. The chrysobull of Isaac II Angelos in 1189 (Reg. 1590)[300]

6.1 Introduction

In 1189 Isaac II Angelos granted another two chrysobulls to Venice. While there are only indirect references to the first,[301] the second has been preserved, though only in Latin.[302] This Latin translation was entitled "Privilegium Isaachii imperatoris constantinopolitani"[303] by the Venetinas. After mentioning the obligation of the Venetians to remain loyal to Byzantium in line with those agreements that have been accompanied by an oath, the emperor refers to the agreement with the Venetians regarding the property that was confiscated in 1171, and confirms that this property must be returned to the Venetians. He then refers to the compensation that was ordered by Manuel I to be paid to the Venetians as a result of the events of 1171, which totalled 14 *kentenaria*.[304] From this amount, only one *kentenarion* had been paid. By this chrysobull, the emperor grants the German and French districts in Constantinople to the Venetians, and allows the Venetians to raise suits against the Byzantines who took their goods in 1171.

[300] Although Isaac II Angelos had, in fact, issued two chrysobulls in 1189, this is the only one that has been preserved.
[301] Reg. 1589, see Dölger, *Regesten*, p. 298.
[302] Pozza and Ravegnani, *I trattati*, pp. 105-110, no 9.
[303] Pozza and Ravegnani, *I trattati*, p. 105, line 1, no 9.
[304] For the term *kentenarion*, see Morisson, *Byzantine money*, pp. 920 and 951 with further bibliographical references.

6.2 Legal Issues

In this document, the interest for a legal historian lies firstly in the provisions related to the oaths and envoys, secondly to grants and thirdly to Venetian property, which was confiscated by order of Manuel I Komnenos in 1171. As in the former documents, in this act the oath is used as means of confirming an agreement. In the first phrase of the chrysobull, the emperor states that what is agreed to and sworn by an oath is confirmed by the doge of Venice and therefore by the whole population of Venetians to the emperor.[305] Further on, we are informed that the Venetian envoys Petro Michael, Octaviano Quirinus and John Michael[306] were sent to the Byzantine emperor to confirm by oath the agreement with the emperor. Two more envoys, Petro Cornario[307] and Domenico Memmo,[308] the *procurator* of the church of San Marco, were later sent to Constantinople to ask for a confirmation of the agreement.[309]

The term *iusiurandum* is used once again in this act, when it is stated that the chrysobull will be valid as long as the present and future doges and the Venetian population, observe their side of the agreement and everything they have promised and confirmed by their oath.[310] After the grants, near the end of the act, it is repeated that the Venetians will possess all that is delivered in the chrysobull, as long as the present and future doges of Venice and all the Venetians observe what has been promised by the convention and confirmed by oath; and that they will also possess everything that was promised and confirmed by a "legal oath" (*iusiurandum*) by their representatives: Petro Cornario, Petro Michael, Octaviano Quirinus, John Michael and Domenico

[305] "Confirmata equis est iam conventionibus scriptis, per sacramenta corroboratis a nobilissimo et imperii nostri fidelissimo duce Venetie, Aurio Magistropetro, qui dignitate protosevasti a nostra sublimitate decoratus est, et ab universa Venetie plenitudine imperio nostro et Romanie,..." in Pozza and Ravegnani, *I trattati*, p. 105, lines 2-6, no 9.

[306] On these three Venetians, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 30, p. 214, commentary, line 13 who also refers to the Venetian acts in which we come across them.

[307] See Gastgeber, *Übersetzungsabteilung*, vol. 3, no 30, p. 215, commentary, lines 16-17.

[308] Gastgeber, *Übersetzungsabteilung*, vol. 3, no 30, p. 215, commentary, lines 17-18.

[309] "Quippe et nuncii ad nostram clementiam missi sunt, primo Petrus Michael, Octavianus Quirinus et Iohannes Michael, conventionem suam, quam imperio nostro et Romanie fecerunt, iuramento corroboratam equidem offerentes, et que ipsis promissa sunt per chrysobulum ut dictum est exigentes, deinde vero sororius nobilissimi et imperio nostro fidelissimi ducis Venetie Petrus Cornarius et Dominicus Memmus, procurator ecclesie Sancti Marci, iniunctum profecto habentem agendi simul cum precedentibus..." in Pozza and Ravegnani, *I trattati*, p. 106, lines 8-16, no 9.

[310]"..., quousque erga imperium nostrum et Romaniam suam conventionem inviolatam custodiunt nunc existens nobilissimus dux Venetie et post eum futuri duces Venetie et universa eius plenitudo, nec non et omnia, que per conventionem ab iis promissa sunt et iureiurando corroborata, conservant." Pozza and Ravegnani, *I trattati*, p. 108, lines 16-20, no 9.

Memmo, the *procurator* of the church of San Marco.[311] The *iureiurando corroborata* again refers to the confirmation that has been made by the envoys. We have already come across the term *iusiurandum* once in the chrysobull of Manuel I Komnenos in 1147.[312] In that case it was also used when Venetian envoys promised an agreement with the emperor. In that chrysobull, as well as here, the same questions apply regarding the term *iusiurandum*.[313] In this chrysobull, the emperor also extends the Venetian district in Constantinople; in particular he grants to them the German[314] and French districts including maritime areas:

Quapropter et nostra clementia iubet per presens chrysobulum verbum, habere Veneticos universa alia, que a nuntiis eorum postulata sunt, ipsosque embolos Alemannorum et Francigenarum et maritimas eorum scalas, que in presentia gramaticorum nostre serenitatis, Constantini Pediatite[315] et clarissimi proto-nobilissimi Nichite Valianite,[316] ab adesimotato Constantino Petriota[317] per practicum eis tradita sunt; quod debet corroborari quidem per superscriptionem pansevasti sevasti et nostre sublimitati familiaris

Therefore our Clemency orders by this present chrysobull, that the Venetians will have everything requested by their envoys; including these very same districts of Germans and French and their landing-stages (*scalai*) which have been delivered by an act (*per practicum*) in the presence of the secretaries (*grammatikoi*) of our Clemency, Constantine Pediadites and of the *clarissimus, protonobilissimus* Niketas Balianites, by the *pansebastos sebastos* Constantine Petriotes. And this act must be ratified by a superscription (προὸταξις)[319] of the *oikeios* archicancellor of our imperial environment, *kyr* John

311 "Erunt autem et tradita ipsis omnia possidentes, ut dictum est, quousque ea, que per conventionem, nunc existens nobilissimus dux Venetie et post eum futuri duces Venetie et universa eius plenitudo custodiunt, servant quoque firmiter et que a legatis eorum, sororio scilicet nobilissimi ducis Venetie, Petro Cornario, Petro Michaele, Octaviano Quirino, Iohanne Michaele et Dominico Memmo, procuratore ecclesie Sancti Marci, per conventionem nunc promissa sunt et iureiurando corroborata." in Pozza and Ravegnani, *I trattati*, p. 109, lines 8-16, no 9.

312 Reg. 1304.

313 I will return to this matter in chapter V,5.

314 About the German district, see Janin, *Les sanctuaires*, p. 175. In 1142 the king of Germany Conrad III had asked John Komnenos for an area in Constantinople in which to build a church for the Germans living there. It seems that the Byzantine emperor had agreed to this but the area was not granted directly. As Nicole has suggested, because there is not sufficient documentation for the French and German districts and they were rarely used, it is presumably the case that they were not officially granted to France and Germany but were used occasionally by the French and German merchants. See Nicole, *Byzantium and Venice*, p. 116.

315 For Constantine Pediadites, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 30, p. 215, commentary, lines 49-50.

316 For Niketas Balianites, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 30, p. 215, commentary, line 50.

317 For Constantine Petriotes, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 30, p. 215, commentary, line 51.

archicancellarii, domini Iohannis Duce; cognitum autem fieri et congruis secretis cum presenti chrysobulo imperii nostri. Quorum equidem omnium annuus introitus quinquaginta libris constat yperperorum, secundum quod ex traditionis istorum practico composito patet.[318]

Ducas, and registered at the corresponding *sekreta*, together with this present chrysobull which will also be registered. And all the yearly income of all these correspond to 50 *librae* of *hyperpyra*,[320] according to what is clear from the act of delivery of them (*practicum traditionis*) that has been made.

The formalities required in exercising the grant are: first the drawing up of an act of delivery by a Byzantine officer in the presence of two Byzantine secretaries,[321] and second the ratification of this act by *superscriptio* (πρόταξις) by another Byzantine officer. Finally, the act must be registered together with the chrysobull at the competent offices. The formal execution of this grant is very similar to that of the imperial grant in the chrysobull of Manuel I Komnenos in 1148.[322] In both cases, an act of delivery was to be made and then ratified by another Byzantine official by way of an inscription. The difference between the two cases is that in the aforementioned chrysobull of Manuel I Komnenos, reference is made to a *practicon corporalis traditionis*, whereas here the act of delivery is mentioned as *practicum traditionis*.[323]

Regarding the names of the Byzantine officials mentioned in this act, I note that in a chrysobull of Isaac II Angelos directed at Genoa, Constantine Pediadites is mentioned as "γραμματικός" and Constantine Petriotes as "δεσιμωτάτος Κωνσταντίνος Πετριώτης".[324] Moreover an imperial order (πρόσταγμα) has been preserved addressed to the *protonotarios* Constantine Pediadites and another officer.[325] We also come across the name Niketas Balianites in an act of Isaac II Angelos to the *katholikos* of the Armenians.[326] As Dölger suggests, John (Ioannes) Ducas is likely to be the *logothetes tou*

[318] Pozza and Ravegnani, *I trattati*, p. 107, line 18 – p. 108, line 3, no 9.

[319] See the discussion of *superscriptio* in the examination of the chrysobull of 1148 (Reg. 1373) in chapter II,4.3.1.

[320] 1 *libra* = 72 *hyperpyra*, so here 3.600 *hyperpyra*.

[321] Dölger mentions here that the Venetians are to receive the two districts by the *grammatikoi* Constantine Pediadites, Niketas Balianites and Constantine Petriotes on the basis of an act that had to be signed by John Ducas, Dölger, *Regesten*, p. 299. However, I think that the meaning of this phrase is that an act of delivery should be made by Constantine Petriotes in the presence of the *grammatikoi* Constantine Pediadites and Niketas Balianites, and that this act should then be ratified by a *superscriptio* (πρόταξις) by John Ducas.

[322] Reg. 1373.

[323] The difference is the word *corporalis* which accompanies the *traditionis*; for a full treatment of this term, see chapter V,2.

[324] Reg. 1609 in 1192. "Δέσιμος (=αἰδέσ.)" means respectful, see Trapp, *Lexikon*, p. 348.

[325] Reg. 1661a in 1201.

[326] Reg. 1567g [1621] in 1185.

dromou who appears in many other Byzantine imperial acts of that time.[327] The emperor confirms that the Venetians will receive this income in full and that they will not suffer any disturbance from anyone, not even from monasteries, members of the palace or relatives of the emperor. The corresponding abstract follows:

concedens….et omnem introitum eorum accipere, nequaquam a fisco vel ab aliqua personarum, quibus hec attinent et quibus hec ablata ipsis dantur, infestationem aliquam manifestis Veneticis subire debentibus, quamquam monasteria sint sive sancte domus aut imperio nostro propinque vel alie; quoniam clementia nostra introitus de his provenientes talionem eis factura est, possessionemque horum inseditiosam Veneticis facit.[328]

…the emperor allows the Venetians to receive the income of these [of the *emboloi* and of the *scalai*], while said Venetians should not undergo any kind of disturbance from the fiscus or from any of the persons to whom they now belong and from whom they will be taken when they [the *emboloi* and *scalai*] are given to them, even if they are monasteries or holy churches because our Clemency will compensate them for the income that comes from them and makes their possession undisturbed for the Venetians.

As far as the legal terminology is concerned, *possessionem facio* is used with dative (*Veneticis*) to indicate that possession has been made unassailable for the Venetians.[329] Toward the beginning of the act it is stated that because the Venetians will observe what they have promised to the emperor, he has decided to return the goods that were taken from them when they were imprisoned at the time of Manuel I Komnenos, and to pay the compensation of 14 *kentenaria* that was promised to them, from which one *kentenarion* had already been paid.[330] A favourable provision for the Venetians is included regarding property lost in the confiscation ordered by Manuel I Komnenos. Venetians can raise a suit against the persons who took their property during the events of 1171. The corresponding abstract reads as follows:

[327] See Reg. 1350, Reg. 1351b, Reg. 1398a, Reg. 1416, Reg. 1417, Reg. 1526, Reg. 1527a, Reg. 1581, Reg. 1582, Reg. 1587, Reg. 1598, Reg. 1603 and Reg. 1635c.

[328] Pozza and Ravegnani, *I trattati*, p. 108, lines 14, 20-26, no 9.

[329] See chapter V, 2.

[330] "Quoniam vero oportunum erat Venetie satisfieri in iis, que a nostra serenitate ei promissa sunt, videlicet in redditione rerum, que Veneticis ablate fuerunt tunc, cum a semper memorando imperatore et desiderantissimo celsitudinis nostre patruo, domino Manuele Comnano capti fuerunt, et exhibitione centenariorum quattuordecim yperperorum, que ultra eam ipsis promissa sunt ob causam, que in chrisobulo pro iisdem edito notificantur, ob quos et unum centenarium yperperorum eis preimpensum est…" in Pozza and Ravegnani, *I trattati*, p. 106, lines 1-8, no 9. For the term *kentenarion* see Morisson, *Byzantine money*, pp. 920 and 951 with further bibliographical references.

Concedit equidem nostra sublimitas Veneticis accionem movere contra homines imperii nostri, qui, ceu ipsi suggesserunt, res astulerunt ipsorum iussione semper memorandi imperatoris et desideratissimi patrui celsitudinis nostre, domini Manuelis, tunc, cum capti(s) fuerunt, subtraxerunt autem et non obtulerunt secundum quod in predimisso chrysobulo celsitudinis nostre de hoc constitutum est, omnia alia actione debiti, que Veneticis contra Romeorum quempiam, vel contra ipsum fiscum, vel Romeis et fisco contra Veneticos ante captionem ipsorum convenerit, irritari debente ab utrisque partibus.[331]

The Venetians are therefore allowed by our Majesty to raise a suit against the persons of our empire who, according to what they themselves have suggested, took away their things by order of the emperor, *kyr* Manuel, of everlasting memory and our beloved uncle, at the moment of their arrest, but who have in fact taken them away and not given them back according to what was ordered in the former chrysobull of our Majesty, and that all other actions concerning debts, which were raised by the Venetians against any Byzantine, or against the state itself or actions raised by Byzantines or by the state against Venetians before the arrest of themselves [of the Venetians, before the events of 1171] have to be stopped by both parties.

What is meant here is that the Venetians have the right to sue persons who took their things during the confiscation ordered by Manuel I Komnenos and who have failed to present themselves to the committee instructed by the last chrysobull of Isaac II Angelos to locate and return confiscated goods. The term *actionem movere*, is used which clearly indicates a legal procedure and means to raise an action to sue someone. The equivalent Greek term could have been something like "ἐγείρω / κινῶ ἀγωγήν" or "εἰσάγω αἰτίαν." In the above excerpt it is also ordered that trials regarding debts that commenced before the events of 1171 should stop for both parties. From the phraseology used, I can not exclude the possibility that this clause possibly refers to both courts in Venice and Constantinople. Presumably, the intention of the emperor is to mark a new beginning with the Venetians.

[331] Pozza and Ravegnani, *I trattati*, p. 109, lines 17-26, no 9.

7. The chrysobull of Alexios III Angelos in 1198 (Reg. 1647)

7.1 Introduction

Some years before the fourth crusade and the sacking of Constantinople by the crusaders, Alexios III Angelos granted the last preserved Byzantine chrysobull to the Republic of Venice.[332] A Latin translation of this act is preserved, the manuscripts of which are currently kept in the state archives of Venice.[333] In the text it is clearly stated that this act is a *chrysobulum verbum* (χρυσόβουλλος λόγος).[334] This document is the first and only Byzantine imperial act towards an Italian city in which many legal matters are regulated. As we will see further on, the act covers many fields of law including civil and 'criminal law' provisions, law of procedure and of succession.

The *prooimion* of the act consists of a general rhetorical introduction followed by a reference to the help that Venice has offered to the Byzantine Empire. Detailed information about the negotiations that took place for the issue of this act also appears at the beginning of the document.[335] After long negotiations, Venetian envoys reached an agreement with the *logothetes tou dromou* (*cancellarius vie*), Demetrios Tornikes.[336] An oath made by these Venetian envoys is inserted, by which they swear upon the Gospel and the Holy Cross that they have agreed to everything that Venice had agreed with emperor Alexios Komnenos according to the wishes of the doge and his written mandate to them which corresponded to the will of the majority of the Minor and the Great Council of Venice.[337] Moreover, they swear on the soul of the doge that the doge will promise to uphold the agreement reached by the envoys, and that he will ensure that the population of Venice promises as well.[338] The emperor adds that the Venetian envoys have sworn to this and they

[332] Reg. 1647.

[333] Apparently there are two manuscripts, one in *Liber Albus* fol. 17ff. and one in *Liber Pactorum* I, fol. 118ff.

[334] Pozza and Ravegnani, *I trattati*, see p. 128, lines 3-4, line 8, line 14 and line 25, p. 130, lines 6-7, p. 133, line 14, p. 137, line 1 and line 7, no 11.

[335] For these negotiations, see the summary of Reg. 1647 in Dölger, *Regesten*, p. 326.

[336] He is also mentioned in Reg. 1571, Reg. 1601b, Reg. 1607, Reg. 1609 and Reg. 1646.

[337] "...iuramus...ad sancta Dei evangelia et ad honorabilem et vivificam crucem, quod omnia, que pacti sumus cum sanctissimo et altissimo imperatore Romanorum et semper augusto domino Alexio Comnano, secundum hortationem et voluntatem predicti nobilissimi ducis Venetie et ex scripta eius commissione ad nos ex voluntate maioris partis Parvi et Magni Consilii Venetie facta convenimus et pacti sumus…" in Pozza and Ravegnani, *I trattati*, p. 121, line 25 – p. 122, line 7, no 11.

[338] "...et quod concessit et commisit nobis idem nobilissimus dux Venecie, ut nos super animam suam iuremus, quod et ipse ea, que a nobis pacta sunt et conventa, iurabit et homines Venetie iurare faciet…" in Pozza and Ravegnani, *I trattati*, p. 122, lines 7-10, no 11. They add that this promise is made in good faith in the name of God, so may God help them and his Holy Gospel and Holy Cross for ever: "Et sicut hec iuramus sine fraude et malo ingenio, sic adiuvet Deus et sancta eius evangelia et honorabilis atque vivifica crux

have given the emperor a text on behalf of the doge and the Venetians, signed by them (the doge and the Venetians), which is inserted as a whole into the chrysobull.[339]

The text that is inserted ratifies the obligations of Venice undertaken by the privilege act of Isaac II Angelos.[340] It is a rather long abstract that begins with "Non est Venetia coniuncta…"[341] and ends with "..per chrisobula imperii eius"[342] and is very similar to the text of the privilege act of Isaac II Angelos[343]; in some parts it is practically identical. The provisions, however, concerning the debts between Venetians and Byzantines mentioned in the act of Isaac II Angelos[344] are not included in this chrysobull. Perhaps the reason for this is that further on in the act there is detailed information about what happens in civil cases. After the enumeration of the duties of Venice, the emperor mentions that the Venetian envoys have promised all this to his empire and have given this oath in writing.[345] The emperor then confirms that he will send the chrysobull to the doge and the Venetians by means of his envoy, Theodore Aulicalamos, because the Venetians had sworn an oath, as was customary, and have already sent this signed oath in writing to the emperor by means of the Byzantine envoy.[346] Therefore, the emperor ratifies all grants given by former emperors, namely Alexios I Komnenos, John II Komnenos, Manuel I Komnenos and Isaac II Angelos.[347] Moreover some additional obligations from

predictum ducem nostrum et nos, et in hoc seculo et in futuro…" in Pozza and Ravegnani, *I trattati*, p. 122, lines 11-13, no 11.

339 "Hec igitur iurantes, et que pacta sunt ab eis nostre magnificentie, ut ex parte predicti nobilissimi ducis eorum et totius Venetie scripto ab eis subscripto comprehendentes, id nostre tranquillitati tradiderunt, sic per ditiones habens..." in Pozza and Ravegnani, *I trattati*, p. 122, lines 13-17, no 11.

340 Reg. 1578.

341 Pozza and Ravegnani, *I trattati*, p. 122, line 18, no 11.

342 Pozza and Ravegnani, *I trattati*, p. 127, lines 23-24, no 11.

343 Reg. 1578. This was the act in which the duties of the Venetians were described in detail, as we have seen.

344 See the examination of that act, Reg. 1578 in chapter II,5.

345 "Et que quidem suprascripti prudentissimi legati nobilissimi et fidelissimi imperio meo protosevasti et ducis Venetie, Henrici Dandoli, ad imperium meum et Romaniam pepigerunt et iuraverunt, et in scripto ab eis subscripto comprehendentes imperio meo tradiderunt…" in Pozza and Ravegnani, *I trattati*, p. 127, line 24 – p. 128, line 2, no 11.

346 "Imperium autem meum hec suscipiens, presens chrysobolum verbum suum transmisit nobilissimo et fidelissimo imperio meo protosevasto et duci Venetie et universe Venetie plenitudi per imperii mei legatum illuc directum, per honorabilissimum et familiarem imperio meo protonotarium vie dominum Theodorum Aulicalamum, quod chrysobolum verbum scilicet et promittit eis, quoniam nobilissimo duce eorum prosevasto et Magno et Parvo Consilio Venetie, ac alia eius plenitude suscipientibus hoc, sacramento quoque secundum suam consuetudinem confirmantibus, et in scripto ponentibus hec omnia continenti, et propriarum suarum manuun subscriptionibus id consumantibus, et cum predicto protonotario imperio meo id mittentibus, tradetureis ab eo presens chrysobolum verbum…." in Pozza and Ravegnani, *I trattati*, p. 128, lines 3-14, no 11.

347 See Reg. 1081, Reg. 1304, Reg. 1365 and Reg. 1578.

the Byzantines are included. The Venetians are granted the privilege to trade freely within the entire empire, on sea or on land. A sanction is provided against officers who prevent the Venetians from exercising their commercial activities; he who disturbs or takes away something of theirs, will have to pay back four times what he has taken.[348] The last part of the chrysobull includes detailed legal provisions about civil and 'criminal law', as well as law of procedure and succession law.

[348] "Si quis vero ausus fuerit in aliquo eos inquietate, vel aliquid ab eis auferre, qua magna ira imperii mei erit infestandus, et quod auferetur, in quadruplum redditurus…" in Pozza and Ravegnani, *I trattati*, p. 132, lines 10-14, no 11.

7.2 Legal Issues

7.2.1 Civil cases

7.2.1.1 Byzantine versus Venetian: jurisdiction of a Venetian judge in Constantinople

The legal part of the chrysobull begins with a request made by two Venetian envoys, Petro Michael and Octaviano Quirino. The envoys complain to the emperor because, in their view the following has occured:

...iam dicti prudentissimi legati Venetie, Petrus Michael et Octavianus Quirinus, retulerunt imperio meo, quia ex non scripto usque et nunc causis inductis ab aliquo Grecorum contra aliquem Veneticum, a legato Venetie per tempora in magna urbe existente iudicatis et solutis, interdum quidem Grecorum quibusdam civilium iudicum vel in palatio imperii mei custodientium accedentes, adtractationes gravissimas fidelissimis imperio meo Veneticis superinducunt, et in carcerem recrudi eos faciunt, et omnibus aliis dedecoribus subici.[349]

...the already mentioned most prudent envoys of Venice, Petro Michael and Octaviano Quirino, have told my Majesty, that because until the present day it sometimes happens that in cases brought by a Byzantine against a Venetian, in accordance with an unwritten rule, which have already been judged and solved by the Venetian representative (*legatus*) who at that time is serving in the great city [Constantinople], some Byzantines approaching some of civil (Byzantine) judges or the guards in the palace of my Majesty, lay very serious accusations against the Venetians, who are most loyal to my Majesty, and thus effect that they are put in prison and are treated with all other kinds of dishonour.

In other words, cases between a Byzantine plaintiff and a Venetian defendant that had already been judged by the Venetian representative in the Byzantine capital, were being brought forth again by the same Byzantine plaintiff but this time before a Byzantine authority. The representatives thus complain because the Venetians are judged twice for the same case. This is against the principle of *ne bis in idem*, which means that the same case between the same persons could not be judged twice, a principle that is still valid today. A second reading of this passage could be that, although it was customary for cases in which a Byzantine brought an action against a Venetian to be judged by the Venetian representative (*legatus*) in Constantinople, some Byzantines brought such actions before Byzantine authorities. According to this reading we are not dealing with the principle of *ne bis in idem* since the Venetians had not

[349] Pozza and Ravegnani, *I trattati*, p. 132, lines 15-23, no 11.

already judged the case but the Byzantine plaintiff was to avoid the exclusive jurisdiction of the Venetian judge.[350] In both readings of this passage, it is interesting that Venetian representatives judged cases regarding Venetians and Byzantines. The expression *causam inducere* means to raise a suit, to begin a trial and the corresponding term in the original Greek text could have been, for example, the expression "αἰτίαν εἰσάγειν."

Two questions in particular arise from this abstract. The first question concerns the introduction of this practice, namely when exactly did the Venetian representatives in Constantinople actually begin to judge cases involving their citizens there, as well as cases between them and Byzantine citizens? This is the first time that reference is made in a Byzantine imperial act to such a *legatus*, namely a Venetian representative sent to Constantinople to regulate the affairs of Venetians resident there and to judge cases concerning them.[351] At this point it is worth mentioning an important piece of testimony that we have come across in published Venetian documents. It is a text dated March 1150, issued in Constantinople by such a *legatus* based on his jurisdiction and refering to a case between Venetian citizens probably resident in the Byzantine capital. It was signed by Sebastiano Ziani, who is mentioned as the *legatus* of doge Domenico Morosini and by some other Venetians, who apparently acted as judges also, and was ratified by a notary who happened to be a priest. The act begins with an invocation of Jesus Christ, which is followed by the date and place of issue.[352] At the beginning of the text, the persons who signed it state that they preside over public affairs and it is therefore their responsibility to provide equity and justice by law for everyone.[353] The text describes a situation in which a merchant presents his request to dissolve his contract of *compagnia* to the *legatus* Ziani.[354] The *legatus* mentions that he chose three others to give him advice as professional experts in law.[355] They advised him what to do (namely to make the merchant swear an oath) and then the decision was made by the *legatus*.[356] I assume that the law to which they refer is the Venetian law, since we are dealing with a case between Venetians

[350] According to this second reading the *iudicatis et solutis* would not have been translated as "have been already judged and solved by the Venetian" but as "judged and solved by the Venetian" in general.

[351] We have seen the term *legatus* in earlier acts, where it was always used to describe the envoys who were sent to Constantinople to negotiate and reach an agreement with the emperor (see for example Reg. 1304, Reg. 1509). The *legatus* mentioned in the present act was possibly the forerunner of the later *bailus*. For this official of the Republic, see Maltezou, *Bailos*.

[352] Morozzo and Lombardo, *Documenti*, p. 96, line 1 – p. 97, line 1, no 95.

[353] "Cum rebus publicis presidemus omnium equitati et iustitiae legaliter previdere debemus..." in Morozzo and Lombardo, *Documenti*, p. 97, lines 1-2, no 95.

[354] For this contract, see Kretschmayr, *Geschichte*, pp. 351ff.; Thiriet, *La Romanie*, pp. 48-49 and Condanari-Michler, *Collegantia*.

[355] Morozzo and Lombardo, *Documenti*, p. 97, lines 24-27, no 95.

[356] Morozzo and Lombardo, *Documenti*, p. 97, lines 27-40, no 95.

judged by Venetian authorities. Hence, this Venetian document proves that, at least from 1150, the Venetians had a representative (*legatus*) in the Byzantine capital who was competent, among other things, to judge cases between Venetians; however, we do not know with certainty when this Venetian representative also began to judge mixed cases, namely cases between Byzantines and Venetians.

The second question concerning the passage in the aforementioned chrysobull is whether the practice by which Venetian representatives in Constantinople could judge cases referring to Venetians, was officially allowed by the emperor. There is nothing remarkable in the fact that the Venetians in Constantinople had their own judge for their own cases; it is self-evident that the Venetians trusted their countrymen more than the Byzantine officials.[357] What is interesting is that, according to this chrysobull, the Venetian judge must also have judged mixed cases. The fact that Byzantines who had lost their case against a Venetian before a Venetian judge, then brought their case again before a Byzantine official, is an indication that the jurisdiction of the Venetian judge was not officially allowed. I assume that the jurisdiction of the Venetian judge in Constantinople for these cases was customary rather than statutory.

After all, the text of the chrysobull states that the Venetian representative judged cases brought by a Byzantine against a Venetian according to "an unwritten rule."[358] This explains why, as we will see in the following section, the envoys ask the emperor to officially allow jurisdiction for the Venetian judge in Constantinople. In particular, they ask the emperor to allow the Venetian authority in Constantinople to judge civil cases brought by a Byzantine against a Venetian and to allow the *logothetes tou dromou* to judge civil cases brought by a Venetian against a Byzantine citizen; if the latter official is not present in the Byzantine capital, the *megas logariastes* can judge these cases:

...deprecati sunt igitur imperium meum, ut et tale capitulum per presens chrysobolum verbum imperii mei solvatur, et concedatur eis, quod Greco quidem contra Veneticum agente in peccuniali causa, a legato Venetie, qui tunc in magna erit urbe, iudicium fieri debeat; Venetico vero contra Grecum similiter agente, si quidem, qui tunc fuerit cancellarius vie, in magna urbe inerit, apud eum causa moverit et iudicari debeat; si vero forte ipse in magna urbe non fuerit, apud tunc magnum logariastam cause

...they have asked therefore my Majesty that this issue is also solved by the present chrysobull of my Majesty and that it is granted to them that, when a Byzantine sues a Venetian in a civil case, the case must be judged by the legate of Venice, who is at that time in the great city [Constantinople]; when, however, a Venetian sues a Byzantine likewise, if the person who at that time is the *logothetes tou dromou* is present in the great city [Constantinople], he [the Venetian] will bring the case before him and it has to be judged by him [the *logothetes*]; if,

[357] See Laiou, *Institutional Mechanisms*, pp. 161-181, especially p. 173.
[358] "...ex non scripto..." in Pozza and Ravegnani, *I trattati*, p. 132, line 17, no 11.

iudicentur…[359]

however, he himself happens not to be in the great city, the case will be judged before the person who at that time is the *megas logariastes*…

Indeed the emperor allows this request of the Venetian envoys and orders the following:

...precepit [imperium meum] per presens chrysobolum verbum, quod Greco quidem contra Veneticum in pecuniaria causa agente, legatus, qui per tempora in magna urbe erit, tale iudicium perscrutetur; et scripto quidem demonstrato a greco tavulario composito, certificato etiam ab aliquo iudicum veli et epi tu yppodromi vel symiomate[360] alicuius predictorum iudicum, aut et ab aliquo pontificum vel ab aliquot tavulario vel iudice, per quem apud Veneticos dignum fide habeatur, secundum huiusmodi scripti comprehensionem decisionem cause superinduci.[361]

...and [my Majesty] has ordered by the present chrysobull that, when a Byzantine sues a Venetian in a civil case, the person who is at that time the legate in the great city [Constantinople] will investigate this case; and when a written document has been shown composed by a Byzantine notary, and also certified by one of the judges of the *velum* and the *hippodrome* or by a decision by one of these judges or by one of the bishops or by a notary or a judge whom the Venetians trust, according to the contents of this writing a decision on the case will be taken.

According to this chrysobull, the Byzantine emperor allows the Venetian judge jurisdiction over civil cases when the defendant is a Venetian. When a document by a Byzantine notary exists, it has to be ratified by some other authorities and the decision will be then based on this document, but it is not yet clear from the text of what exactly this document consisted.[362] The ratification of documents by the so-called judges of *velum* and of the *hippodrome* was something common in the 11th and 12th centuries.[363]

It is evident that the emperor refers to civil cases here, since the term *pecuniaria causa* is used. Literally the term *pecuniaria causa* means cases regarding money and it has been suggested that the emperor refers to financial cases.[364] I prefer to use the term civil cases as opposed to criminal. The

[359] Pozza and Ravegnani, *I trattati*, p. 132, line 23 – p. 133, line 5, no 11.
[360] Reinsch, *Über das Hypobolon*, pp. 248-249: "Urteilungsbegründung".
[361] Pozza and Ravegnani, *I trattati*, p. 133, lines 13-21, no 11.
[362] Further on in the act, after the formalities pertaining to the Venetian judges in Constantinople are described, reference is made to a procedure of oaths, which is connected to the lack of evidence in a trial. See Pozza and Ravegnani, *I trattati*, p. 134, lines 11-15, no 11.
[363] See Goutzioukostas, *Aponomi*, pp. 172-176.
[364] See Macrides, *Competent court*, p. 125; Goutzioukostas, *Aponomi*, p. 243 and p. 254.

equivalent Greek term must have been "χρηματική" which is used in Byzantine law to describe civil cases. In Byzantine legal practice, cases and trials are divided into civil and criminal cases (and actions), thus into "χρηματικαί" and "ἐγκληματικαί δίκαι" (and "ἀγωγαί") respectively, according to Byzantine legal sources.[365] An explanation as to why the term "χρηματική" is used to describe civil cases is likely to be that, generally speaking, in the latter cases the plaintiff asks for something from the defendant that could be estimated in money, whereas in criminal law the accuser asks for the punishment of the accused. The difference between the two cases in Byzantine law is clearly described in the Lexicon of *Hexabiblos aucta*, where it is mentioned that the "χρηματικὴ ὑπόθεσις" is the case that causes financial damage, whereas the "ἐγκληματική", being more severe, brings a punishment.[366] Regarding the legal terminology used, the expression *iudicium perscrutari* used in this chrysobull to describe that "a case is investigated" could have been something like "δίκην πολυπραγμονεῖσθαι" in the original Greek. It is also interesting that the Latin text repeats the word *symioma* (*semeioma*) typically used to describe a decision of a judge (σημείωμα) in Byzantine law.[367]

A fundamental question concerns the applicable law that the Venetian judge would have applied in cases between Venetians and Byzantines: whether it was Venetian or Byzantine law and furthermore, whether he had the option to choose between the two laws. There is no reference to appeals or to whom they should be submitted. In any case, what is important is that jurisdiction is granted to a foreign judge in the Byzantine capital. While this is limited jurisdiction, the fact is that a foreign judge is allowed to judge cases not only exclusively arising from his countrymen, but also certain cases between Venetinas and Byzantines. Since this provision was promulgated by the emperor on the request of the Venetians, it proves that the latter were not only

[365] See, for example, B. 2,6,23. = Nov. 113c.1pr (BT 78/24-25): "Θεσπίζομεν, ὥστε δίκης ἐξεταζομένης εἴτε ἐπὶ χρηματικαῖς ἢ ἐγκληματικαῖς...";; B. 6,28,12 = C. 12,19,12 (BT 279/12-14): "Οἱ ἐν τοῖς ὑπομνήμασι καὶ οἱ ἀνιόντες αὐτῶν καὶ αἱ γυναῖκες καὶ οἱ κατιόντες παρὰ μόνῳ τῷ μαγίστρῳ ἐνάγονται ἐπὶ ταῖς χρηματικαῖς καὶ ἐγκληματικαῖς δίκαις"; *Ecloga Basilicorum*, p. 338, lines 11-12 (comment on B. 7,19,4. = C. 3.7.1): "Νόει γοῦν τὴν παροῦσαν διάταξιν ἐπὶ τῶν ἐχόντων ἀγωγὰς χρηματικὰς ἢ ἐγκληματικὰς,...". See also the novel of Manuel I Komnenos on court procedure, where he orders that criminal suits should be terminated within two years (τὰ μὲν ἐγκληματικὰ τῶν δικαστηρίων ἐντὸς διετίας περατοῦσθαι), whereas civil law suits should be terminated within three years (τοῖς δὲ χρηματικοῖς τὸν τῆς τριετίας χρόνων ἐξαπλοῦμεν), in Macrides, *Justice*, p. 128.

[366] "Τί διαφέρει χρηματικὴ ὑπόθεσις τῆς ἐγκληματικῆς; ἡ μὲν χρηματική ἐστιν ἡ ζημίαν χρημάτων τοῖς ἔχουσιν αὐτὴν προξενοῦσα, ἐγκληματικὴ δὲ ἡ βαρυτέρα ἔχουσα τιμωρίαν…" in *Lexikon Hexabiblos aucta*, p. 214 (ἀρχὴ τοῦ χ, 1).

[367] See *Ecloga Basilicorum*, p. 27, line 27 – p. 28, line 3 (comment on B. 2,2,37 pr. = D. 50,16,39pr): "Σημείωσις μὲν γάρ ἐστιν ἡ τῆς ὅλης ὑποθέσεως περίληψις, τουτέστιν ὅταν πάντα τὰ λαληθέντα σημειωθῶσιν ἤτοι γραφῶσιν. Καὶ τὰ ἐν δικαστηρίοις γοῦν γινόμενα σημειώματα, ἐν οἷς πᾶσα δικαιολογία τοῦ τε ἐνάγοντος καὶ τοῦ ἐναγομένου καὶ ἡ τοῦ δικαστοῦ τελεία διάγνωσις γράφεται, σημειώσεις καλοῦνται διὰ τὸ τὰ λαλούμενα πάντα καὶ ὅσα ἀναγκαῖα ἐν αὐτοῖς καταγράφεσθαι."

good merchants, but also good negotiators who realised that legal certainty is a condition for good business. They wanted speed and certainty in their work. What beter way to achieve this than a judge of their own in Constantinople whom they could trust?[368]

[368] Similar provisions allowing jurisdiction to the Italians are included in privilege charters granted by the Crusader kings for the Italians in the Crusader states, see on this chapter V,3.

7.2.1.2 Venetian versus Byzantine: jurisdiction of Byzantine judges

Furthermore, the chrysobull lays down what happens in cases between a Venetian plaintiff and a Byzantine defendant:

Si vero Veneticus contra Grecum egerit, apud tunc cancellarium vie, vel eo a magna urbe absente, apud magnum logariastam querelam debeat proponere, et scripto quidem fide digno existente actori Venetico, quamvis a greco tavulario aut iudice veli et epi tu yppodromi, aut a pontifice vel Venetico tabulario vel iudice sit compositum, secundum hoc utique causa decidetur.[369]	When however, a Venetian sues a Byzantine, the Venetian has to raise his complaint before the current *logothetes tou dromou*, or, if he is absent from the great city [Constantinople], before the *megas logariastes,* and when a document exists, which is considered trustworthy by the Venetian plaintiff, even if it is composed by a Byzantine notary or a judge of the *velum* and of the *hippodrome* or a bishop or a Venetian notary or judge, the case will be settled on the basis of this document.

It seems that the procedure in situations where the defendant is a Byzantine and the plaintiff is Venetian, is not as complicated as in the situation when the defendant is a Venetian and the plaintiff is Byzantine, where documentary evidence is present, since there is no mention of ratification of the document by an authority. The reason why the procedure here is less complicated is that the judge in this case is a Byzantine official and there is, therefore, no need for extra formalities, such as the ratification of documents by other authorities. The difference between the section that refers to the jurisdiction of the Venetian judge and that referring to the jurisdiction of the Byzantine judge, is that in the first the notarial document has to be ratified by some other authority. In the first passage, the participle *certificato* is used,[370] which is not included in the second. It is added that, if a document does not exist, the procedure of oaths will take place.[371] The emperor concludes that all civil cases between Venetians and Byzantines will henceforth be settled according to the provisions of this chrysobull.[372]

When the defendant is therefore a Byzantine subject, the competent judge is always a Byzantine officer. The logical explanation for this is that when

[369] Pozza and Ravegnani, *I trattati*, p. 134, lines 16-24, no 11.
[370] Pozza and Ravegnani, *I trattati*, p. 133, line 17, no 11.
[371] The procedure of oaths (*sacramentum calumniae – sacramentum decisionis*) was introduced in a trial if there was not sufficient evidence for one party to prove his case. See further on chapter II,7.2.3.
[372] "Et secundum presentem formam presentis scripti huius chrysobuli imperii mei, ex nunc et deinceps iudicia peccuniaria inter Veneticos et Grecos decidantur..." in Pozza and Ravegnani, *I trattati*, p. 134, line 26 – p. 135, line 2, no 11.

the Byzantine is a defendant, this is more 'crucial' for the Byzantines because one of their subjects is being sued and the emperor wants to make sure that justice will be meted out to the Byzantine subject by a Byzantine official. Moreover, these provisions also remind us, in a way, of the Roman law principle of *actor sequitur forum rei*, namely that in ordinary cases competent court is the place where the defendant resides.[373] In this chrysobull, it is ordered that if the defendant is Byzantine, the judge is Byzantine; if the defendant is Venetian, the judge is Venetian; here of course the term 'residence' is used in a broad sense. It seems that a *privilegium fori* is hereby established for the Venetians since they are allowed to be judged by their own judge in Constantinople if the defendant is a Venetian.

Regarding the Byzantine officers mentioned as judges here, we should note that it is not the first time that the *logothetes tou dromou* is referred to as a competent judge for cases between Venetians and Byzantines. In the first chrysobull in favour of Venice, issued in 992 by Basil II and Constantine VIII, it is stipulated *inter alia* that the Venetians are subject to the exclusive jurisdiction of the *logothetes tou dromou*; he is the only competent authority entrusted to search their ships and judge cases arising between them or between them and other citizens.[374] However, in the act of 992, it is not prescribed in detail for which cases the Venetians have the right to address the *logothetes tou dromou*.[375] The *megas logariastes* is mentioned for the first time in our acts as a competent judge for the Venetians.[376]

[373] See Macrides, *Competent court*, pp. 117-129, especially p. 125; Kaser, *Zivilprozessrecht*, p. 246.

[374] Reg 781: "Insuper et hoc iubemus, ut per solum logothetam, qui tempore illo erit, de dromo, ista navigia de istis Veneticis et ipsi Venetici scrutentur et pensentur et iudicentur, secundum quod ab antiquo fuit consuetudo; et quibus iudicium forsitan inter illos aut cum aliis crescetur, scrutare et iudicare pro ipso solo logotheta et non pro alio iudice qualecumque unquam." in Pertusi, *Venezia e Bisanzio* (*Saggi*), p. 104, lines 31-35.

[375] For the office of the *logothetes tou dromou*, see Miller, *Logothetes*, p. 439; see also Guilland, *Logothètes*, pp. 31-70. See also *ODB*, vol. 2, pp. 1247-1248. See also chapter V,3.1.

[376] For the office of the *megas logariastes*, see *ODB*, vol. 2, p. 1245. There are two acts from 1196 in which the *dikaiodotes* and *megas logariastes* Nicholas Tripsychos acts as president of a high court, see *ODB*, vol. 2, p. 1245.

7.2.2 Formalities of the Venetian judges in Constantinople

The emperor refers to the formalities the Venetian judges in Constantinople have to observe in order to be competent to judge these cases:

Sic etiam quod per qualecumque tempus a nobilissimo et imperio meo fidelissimo protosevasto et duce Venetie ad magnam urbem mittetur legatus, et qui sub eo iudices, statim post in magnam urbem eorum introitum ostendi debeant ei, qui tunc erit vie cancellarius, aut si ipse tunc cancellarius tunc in Constantinopoli non fuerit, ei, qui tunc erit magnus logariasta; et ab eo debeat mitti ad ecclesiam Veneticorum per magnum interpretem, vel si ipse non fuerit, per aliquem curie aliorum interpretem, et per unum eorum, qui cancellarie scriptis deserviunt, aut per unum secreticorum magni logariaste, si talis gramaticus tunc presens non fuerit; et in medio ipsius Veneticorum ecclesie in audientiam totius plenitudinis Veneticorum tunc in Constantinopoli existentium debeant iurare, quod recte et iuste et sine susceptione personarum vel alicuius doni dati vel promissi iudicia, que inter Grecos actores et Veneticos reos erunt, facient, nec aliquod adiutorium Veneticis tribuent, sed equa lance utriusque causam tam Greci quam et Venetici discernent et iudicabunt.[377]

Also that, if at any time a legate is sent to the great city [Constantinople] by the most noble *protosebastos* doge of Venice who is most loyal to my Majesty, he and the judges who serve under him immediately after their entrance in Constantinople have to present themselves to that person, who at that time is the *cancellarius vie* [*logothetes tou dromou*], or, in case this *cancellarius* is not then present in Constantinople, to that person who at that time is the *megas logariastes*; he must then be sent by him to the church of the Venetians accompanied by the high interpreter, or in case he himself should not be there, accompanied by another court interpreter, or by one of those who serve at the office of the *cancellarius* or by one of the secretaries of the *megas logariastes*, if such a *grammaticus* is not present at that time; and in the middle of that church of the Venetians, for the whole body of the Venetians who are then present in Constantinople to hear, they have to swear, that they will dispense justice correctly and justly and without personal preference or any gift or promise in cases between Byzantine plaintiffs and Venetian defendants, and that they will not give any preferential treatment to the Venetians, but that they will settle and decide equitably the case of both the Byzantine and the Venetian.

Hence in order to comply with the formal requirements of their tasks in Constantinople, the Venetian representatives have to perform two actions. First they have to present themselves before the Byzantine authorities and second they have to appear in the Venetian church in Constantinople, where

[377] Pozza and Ravegnani, *I trattati*, p. 133, line 22 – p. 134, line 11, no 11.

they swear an oath mediated by an interpreter.[378] The first action informs the Byzantine authorities as to whom the competent Venetian authorities in the Byzantine capital are, while the second action is connected with the correct performance of their duty. The Venetian representatives have to swear an oath before their fellow countrymen in their own church that they will perform their duties justly. In other words, a simple oath before the Byzantine officials would not have sufficed. The oath taken publicly in their own church is more severe in character, since it corresponds to their legal order and thus binds the representatives in a stronger way to the correct and fair execution of their duties as judges. The emperor ends this part by ordering that all these provisions are valid when a Byzantine sues a Venetian: "Et hec quidem, Greco contra Veneticum agente."[379]

[378] The duties of the office of the *interpretes* consisted of working in embassies, translating documents and serving as translator in negotiations in the Byzantine capital; see *ODB*, vol. 2, p. 1004. The epithet "megas" was added in the 12th century to characterise the chief interpreter; see *ODB*, vol. 2, p. 1004. See also Gastgeber, *Übersetzungsabteilung*, especially vol. 1, pp. I-XII.

[379] Pozza and Ravegnani, *I trattati*, p. 134, line 16, no 11.

7.2.3 The oath of *calumnia*

7.2.3.1 The oath of *calumnia* (ὅρκος συκοφαντικός) in Roman and Byzantine law

In Latin, the word *calumnia* means "trickery, chicanery, a false statement, a false accusation, a malicious charge".[380] In Roman law, it meant that a suit or an accusation was brought forth maliciously in civil or criminal cases respectively and the oath of *calumnia* served as protection from a malicious action.[381] Generally speaking, for the plaintiff, taking this oath meant that he did not bring the action in bad faith[382] and for the defendant that he responded to the claim in good faith.[383] By Justinian law, the oath of *calumnia*, which is translated as "oath against vexatiousness" became a general oath which both parties in the trial had to take. Actually, both parties, including their representatives, were obliged by the judge before the *litis contestatio* to take this oath, by which they swore that they acted in good faith and were rightful about their claim.[384]

A comment about this oath by Stephanos has been preserved in which he explains that in his time, during the preliminary stage of the trial, the plaintiff swore the oath against vexatiousness, whereas the defendant promised that he rightfully opposed.[385] In his comment, Stephanos includes both the corresponding oaths of the plaintiff and the defendant. The oath against vexatiousness (*iusiurandum calumniae*) could also be used in the stage of furnishing proof. The party that wished to use the evidence of a document, for example, had to promise that this proceeding would not lead to the

[380] Lewis and Short, *Dictionary*, p. 272.

[381] On how this technical term was used in Roman law, see Berger, *Dictionary*, pp. 378-79 and Kaser, *Zivilprozessrecht,* pp. 284-85 and 630-32. On the history of the term, see also Sarti, *Giuramento*.

[382] *Gaius* 4,176: "non calumniae causa agere".

[383] *Gaius* 4,172: "non calumnie causa infitias ire".

[384] Kaser, *Zivilprozessrecht,* p. 631. In C. 2,58,2, pr. we read: "...et actor quidem iuret non calumniandi animo litem movisse, sed existimando bonam causam habere: [...] et postea utriusque partis viros disertissimos advocatos, quod iam dispositum est a nobis, iusiurandum praestare, sacrosanctis videlicet evangeliis ante iudicem positis." Translation from *AJC*: "The plaintiff, forsooth, shall swear that he has not set the suit in motion for the purpose of chicanery, but in thinking that he had a good cause; [….] After that the learned advocates of each of the parties, as has already been provided, shall take an oath with the holy gospels, forsooth, placed before the judge."

[385] BS 1411/16-18 (sch. Pa 2 ad B. 22,5,1 = D. 12,2,1).: "Σήμερον γὰρ ἐν προοιμίοις τῆς δίκης, τουτέστι περὶ τὸ διήγημα καὶ ἀντιδιήγημα, δίδοται καὶ ὁ περὶ καλουμνίας παρὰ τοῦ ἄκτορος καὶ ὁ περὶ τοῦ δικαίαν οἴεσθαι τὴν ἀντίρρησιν ὅρκος παρὰ τοῦ ῥέου.." [Translation: In our days during the introductory stage of the trial, namely during the statements of the claim and of the defense (διήγημα and ἀντιδιήγημα), the *calumnia* oath is given by the plaintiff and by the defendant the oath about his opinion that his objection (or defense) is lawful.]

complication of the trial.[386] Moreover, the oath against vexatiousness had to be taken by the party which tendered an oath; otherwise, the action would have been denied for him.[387]

Our documents, however, date from the 11th and 12th centuries, and the commentary of the *Ecloga Basilicorum* is therefore more useful, since this commentary was written around 1142. According to Byzantine sources, this oath referred to as *sykophantikos* (ὅρκος συκοφαντικός), could be used in two stages of the trial: either in the preliminary stage or in the stage of furnishing proofs. From the *Basilica* and the *Ecloga Basilicorum*, we are informed that the judge was obliged to request of both parties that they take an oath**:** the plaintiff took the oath of *calumnia* (ὅρκος τῆς συκοφαντίας), namely that his action was not brought maliciously but being of the opinion that he had good cause. In turn, the defendant promised that he opposed justly. This procedure was a *conditio sine qua non* for the beginning of a trial. The commentator of the *Ecloga Basilicorum* informs us that the judges could not judge the trial unless the oaths of the two parties had been taken.[388]

After describing his suit, the plaintiff had to promise upon the Gospel that he did not raise this case out of malicious intent but because he believes that he is right. The defendant, after responding that he opposes the claims, swears that he believes he rejects the claim in good faith. Moreover, the lawyers of both parties have to promise on the Gospels that they will perform their duties rightfully without using false arguments.[389] In the following section of

---

[386] Kaser, *Zivilprozessrecht*, p. 631.

[387] D. 12,2,34,4: "Qui iusiurandum defert, prior de calumnia debet iurare, si hoc exigatur, deinde sic ei iurabitur….." [Translation from Watson, *Digest*, vol. I, p. 370: one who tenders an oath ought first to swear against vexatiousness, if he is asked to. After that the oath he proposes will be sworn for him…]. And in D. 12,2,37: "Si non fuerit remissum iusiurandum ab eo qui detulerit, sed de calumnia non iuratur, consequens est, ut debeat denegari ei actio: sibi enim imputet, qui processit ad delationem iusiurandi nec prius de calumnia iuravit, ut sit iste remittenti similis..." [Translation from Watson, *Digest*, vol. I, p. 371: where an oath is not excused, but the person tendering offers no oath against vexatiousness, the consequence is that action must be denied him. For one who proceeds to oath-tender without first taking the oath against vexatiousness has only himself to blame if he finds himself treated as one who has let the other off.]

[388] *Ecloga Basilicorum*, p. 312, line 30 – p. 313, line 8 (comment on B. 7,14,20 = C. 2,58,2.6-8, BT 379/13-22); here is the corresponding text of the *Basilica* on which the commentator remarks "Ἐὰν δὲ ὁ ἐναγων μὴ βουληθῇ ὑπεισελθεῖν τὸν ὅρκον τῆς συκοφαντίας καὶ τοῦτο νομίμως ἀποδειχθῇ, μὴ ἐξέστω αὐτῷ ἐπὶ τὴν δίκην ἐλθεῖν, ἀλλὰ ἐκπέσῃ τῆς κινιθείσης ἀγωγῆς ὡσανεὶ ἀναίσχυντος διάδικος, καὶ ἡ στυγνότης τῶν δικαστῶν αὐτῷ μετὰ τῆς θεσπιθείσης ἀπειλῆς ὑπαντήσει καὶ παρὰ τῷ δικαστηρίῳ αὐτὸν ὡς μακρότατα ἐξωθήσει. Ἐὰν δὲ ὁ ἐναγόμενος τοῦτον τὸν ὅρκον ὑπεισελθεῖν παραιτήσηται, ἐν τούτοις τοῖς κεφαλαίοις, ἅτινα τῇ διηγήσει περιέχονται, ἀντὶ ὁμολογήσαντος λαμβανέσθω καὶ ἐξέστω τῷ δικαστῇ τὴν ἀπόφασιν προσενεγκεῖν, ὃν τρόπον αὐτῷ αὐτὴ ἡ τοῦ πράγματος ποιότης ὑποβάλεῖ· οὕτως γὰρ οὐχὶ αἱ δίκαι μόνον, ἀλλὰ καὶ οἱ συκοφαντοῦντες μειωθήσονται."

[389] *Ecloga Basilicorum*, p. 313, lines 9-19 (comment on B. 7,14,20,6-8 = C. 2,58,2,6-8): "Καὶ διδάξας ὁ νομοθέτης ἐν τῷ μὴ τεθέντι ἐνταῦθα μέρει τοῦ κεφαλαίου, ὅτι οἱ δικασταὶ οὐκ ἄλλως δύνανται τὰς δίκας δικάζειν, εἰ μὴ τῶν ἁγίων εὐαγγελίων προκειμένων, καὶ ὅτι καὶ ὁ ἐνάγων μετὰ

the text, the commentator points out what happens if the plaintiff or the defendant refuses to take these oaths. This oath is so important that if the plaintiff refuses to take it and legal proof has been given of this fact, the judge can reject the plaintiff's case on the grounds of abuse and take into account only what the defendant states. The commentator also describes what happens if the plaintiff has changed his residence and lives in another city.[390] If, on the other hand, the defendant refuses to take his oath, it is concluded that he admits to everything that the plaintiff states and he is sentenced by the judge.[391] Therefore, according to Byzantine legal sources, the procedure of the *sacramentum calumniae* of the plaintiff and the corresponding oath of the defendant was so important in Byzantine law that without it, no trial could begin. Generally in medieval legal practice the oath of *calumnia* was used as in Byzantine law, that is, in the preliminary stage of the trial where the participants take the oath that they rightfully, in their view, support the statements they have made.[392]

In Byzantine law, the *sykophantikos* oath (συκοφαντικός ὅρκος) could also be used in the stage of furnishing proofs. As we are informed by the *Ecloga Basilicorum*, it was a general rule that in case there were not sufficient proofs in a trial, the procedure of the "συκοφαντικός" and "τέλειος ὅρκος" could take place. If someone who was in a trial did not have proofs, he could ask the judge to order this procedure; once this request was made, it could not be taken back.[393] There is also some information about this procedure in a

τὸ διηγήσασθαι τὴν οἰκείαν ἀγωγὴν ὀφείλει ὀμνύειν, ὅτι "οὐ συκοφαντικῶς τὴν δίκην ταύτην κινῶ, ἀλλὰ νομίζων καλὴν ἔχειν δίκην", καὶ ὁ ἐναγόμενος μετὰ τὴν ἀπόκρισιν μὴ ἄλλως ἐπεξέρχεσθαι ταῖς οἰκείαις δικαιολογίαις, εἰ μὴ καὶ αὐτὸς ὀμόσει, ὅτι "νομίζων καὶ αὐτὸς καλῇ ἐνστάσει κεχρῆσθαι εἰς τὸ ἐναντιωθῆναι ἦλθον", εἶθ' οὕτω καὶ τοὺς συνηγόρους ἑκατέρου μέρους διορισαμένος ὀμνύειν κατὰ τῶν ἁγίων εὐαγγελίων, ὡς οὐ παραλείψουσιν σπουδὴν ὑπὲρ τοῦ οἰκείου πρόσφυγος καὶ ὅτι καλὸν ἡγοῦνται τὸ πρᾶγμα καὶ οὐ συνοίδασιν ἑαυτοῖς δικαιολογίας ψευδεῖς, ἐπήγαγεν".

[390] *Ecloga Basilicorum*, p. 313, lines 19-29 (comment on B. 7,14,20,6-8 = C. 2,58,2,6-8):"ἐὰν δὲ ὁ ἐνάγων οὐκ ὀμνύῃ τὸν τοιοῦτον ὅρκον καὶ τοῦτο δειχθῇ νομίμως -ἴσως γὰρ δι' ἐντολέως ἐνήγαγεν ἀποδημῶν ἐν τοῖς ἔξω, καὶ ἔγραψεν ὁ δικαστὴς εἰς τὸν κατὰ χώραν ἄρχοντα, ἵνα ἐνώπιον αὐτοῦ τὸν τοιοῦτον ὅρκον δώσει ὁ ἐνάγων παρόντος καὶ τοῦ μέρους τοῦ ἐναγομένου, καὶ ἦλθε τὸ μέρος τοῦ ἐναγομένου λέγον, ὡς οὐκ ἐπείσθη ὁ ἐνάγων ὀμόσαι –οὐκ ὀφείλει γοῦν ὁ δικαστὴς τῆς ὑποθέσεως πιστεύειν τῷ μέρει τοῦ ἐναγομένου ἀπεριμερίμνως, ἀλλὰ ζητεῖν αὐτὸν νομίμως τοῦτο δεικνύειν, τουτέστιν ἢ διὰ μαρτύρων ἢ διὰ σημειώματος τοῦ κατὰ χώραν ἄρχοντος ἢ δι' ἄλλης νομίμου ἀποδείξεως, καὶ τούτου δειχθέντος καταδικάζειν τὸν ἐνάγοντα ὡς συκοφαντικῶς κινήσαντα καὶ τοῦ δικαστηρίου ἐκβάλλειν μετὰ καὶ τῆς θεσπιθείσης ἀπειλῆς ἤτοι τῆς ἐκπτώσεως τῆς δίκης."

[391] *Ecloga Basilicorum*, p. 313, lines 29-31 (comment on B. 7,14,20,6-8 = C. 2,58,2,6.-8): "Εἰ δὲ καὶ ὁ ἐναγόμενος τὸν ὅρκον τοῦτον οὐ πεισθῇ δοῦναι, παραδεχέσθω ὡς ὁμολογήσας πάντα, ἃ ὁ ἐνάγων διηγήσατο, καὶ καταδικαζέσθω παρὰ τοῦ δικαστοῦ.".

[392] See the examples given in *Lexikon des Mittelalters*, vol. II, p. 1403 and *Medieval Latin Dictionary*, pp. 153-55.

[393] *Ecloga Basilicorum*, p. 366, lines 9-12 (comment on B. 9,1,41 = D. 49,5,7): "Ἢ ἐάν τις δικαζόμενος μὴ ἔχων ἀποδείξεις ζητήσῃ γενέσθαι συκοφαντικὸν καὶ τέλειον καὶ ὁρίσῃ τοῦτο ὁ

comment in the *Basilica Scholia*; however, this comment is one by Thalelaios dating from the 6th century, whereas our documents date from the 11th and 12th centuries.[394] Moreover, title 68 of *Peira* is entitled "περὶ ὅρκου καὶ συκοφαντίας" and right at the beginning an example is given of an instance in which someone has to take this oath (συκοφαντικός ὅρκος).[395]

For a better overview of how the oath against vexatiousness (συκοφαντικός ὅρκος) was used in Byzantine legal practice, I refer here to an imperial decision by Manuel I Komnenos in 1147[396] referring to the procedure of the "συκοφαντικός ὅρκος". The case is as follows: The plaintiff is a convert whose father's house and its contents were seized by Jews.[397] After an imperial decision, the house was returned to him, but without its contents, which is why he filed a complaint before a Byzantine official, a *praktor* (πράκτωρ).[398] The official ordered the settlement of the suit by an oath procedure, namely by the performance of the "συκοφαντικός" (oath against vexatiousness) and the "τέλειος" (decisive) oath.[399] The convert then mentions in his petition to the emperor that he, as a Christian, was ordered by the *praktor* to perform the oath against vexatiousness and that the Jews, on the other hand, had to swear the decisive oath.[400] However, according to the plaintiff, while he performed his part by promising the oath, the Jews were not prepared to perform theirs;[401] furthermore, according to the plaintiff, they bribed the Byzantine official.[402]

δικαστὴς, οὐ δύναται μεταμέλεσθαι καὶ ζητεῖν ἔκκλητον· γενικὸν γάρ ἐστι δόγμα, ὅτι ἐν ἀπορίᾳ τῶν ἀποδείξεων ἔχει χώραν ὁ συκοφαντικὸς καὶ ὁ τέλειος."

394 BS 1388/23-29 (sch. Pa 6 ad B. 22,1,80. = C. 4,21,22).

395 *Peira*: 68,1: "…εἰ ἐνάγω κατὰ τινος ὡς λαβόντος παρ' ἐμοῦ νομίσματα, ὁ δὲ ἀπαρνεῖται, αἰτήσομαι δὲ ἐγὼ ὀμνύειν περὶ τούτου, ἀπαιτοῦμαι πρῶτον αὐτὸς ὀμνύειν τὸν περὶ συκοφαντίας, κἀκεῖνος τὸν ἐντελῆ. εἰ δὲ παρέξω μάρτυρας ἐπὶ τούτῳ, εἰ μὲν ὁμώσουσιν οἱ μάρτυρες, ἀπαιτεῖται ἐκεῖνος τὸ χρυσίον· εἰ δὲ μή, ἐπιλογὴν ἔχει ὁ κατηγορούμενος ἢ τοὺς μάρτυρας αἰτεῖν ὀμνύειν ἢ τὸν κατήγορον. τότε δὲ ὁ κατήγορος ἀντεπάγει μὴ δυναμένου [τοῦ] κατηγορουμένου αἰτεῖν τὸν περὶ συκοφαντίας…" in Zepos, *JGR*, vol. IV, pp. 253-4. Translation: if I sue someone because he has received from me money and he denies this, I can ask that I promise about this; in this case, I have to promise first the oath against vexatiousness (τὸν περὶ συκοφαντίας ὅρκον) and he then, the decisive oath (τὸν ἐντελῆ ὅρκον). And, if I provide witnesses for this, if the witnesses promise, he will demanded to give the gold; but if not, the defendant has the possibility to ask either the witnesses or the plaintiff to promise. In that case the plaintiff does something in return where the defendant is unable to ask the oath against vexatiousness.

396 Reg. 1369.

397 On this case, see also Starr, *The Jews*, pp. 221-2.

398 On the *praktor*, see *ODB*, vol 3, p. 1711.

399 "Προσέταξεν οὖν ὁ πράκτωρ ἡμῖν, λυθῆναι τὴν ὑπόθεσιν διὰ συκοφαντικοῦ καὶ τελείου" in Zepos, *JGR*, vol. I, p. 374, col IV. Nov. 55, Reg. 1369.

400 "…καὶ ἐγὼ μὲν ὡς χριστιανὸς ἵνα πληρώσω τὸν συκοφαντικόν, αὐτοὶ δὲ τὸν τέλειον" in Zepos, *JGR*, vol. I, p. 374, col IV. Nov. 55, Reg. 1369.

401 "…εἶτα μετὰ τὸ ὀμόσαι ἐμὲ τὸν συκοφαντικόν, οὐκ ἠθέλησαν πληρῶσαι τὸν τέλειον" in Zepos, *JGR*, vol. I, p. 374, col IV. Nov. 55, Reg. 1369.

402 "…ἀλλὰ δώροις τὸν πράκτορα μετελθόντες ἐξέφυγον τὸν ὅρκον" in Zepos, *JGR*, vol. I, p. 374, col IV. Nov. 55, Reg. 1369.

Therefore, the plaintiff addressed the emperor, asking him to order the *praktor* to solve this case either by forcing the Jews to take the oath or to return the requested things.[403] The emperor issued a rescript ordering the duke of that district to summon the defendants, stating that if the plaintiff swears the "συκοφαντικός" and they refuse the "τέλειος", the *praktor* should persuade them to swear the "τέλειος" or return the things.

[403] "…διὰ γοῦν τοῦτο δέομαι καὶ παρακαλῶ τὸ ἔνθεον κράτος σου, γενέσθαι μοι τιμίαν καὶ προσκυνητὴν λύσιν πρὸς τὸν κατὰ τὴν ἡμέραν πράκτορα, διοριζομένην, ἢ τὸν τοιοῦτον ὅρκον ὀμόσαι καὶ μὴ βουλομένους τοὺς Ἰουδαίους, ἢ ἀναμφιβόλως ἀποδοῦναι ἡμῖν τὰ εὐλόγως παρ' ἡμῶν ἐπιζητούμενα πράγματα…" in Zepos *JGR*, vol. I, p. 374, col IV. Nov. 55, Reg. 1369.

7.2.3.2 The oath of *calumnia* in this chrysobull

In order to understand how the oath of *calumnia* is used in the chrysobull of Alexios III Angelos in 1198, it is important to take a closer look at the whole structure of the legal part of this act.[404] The legal part of the document begins with the problem described by the Venetian envoys and their request to the emperor to change this situation.[405] The emperor accepts their request and orders what will happen henceforth in civil cases when a Byzantine sues a Venetian. The formalities pertaining to the Venetian judges in Constantinople then follow. Afterwards, a clause about the oath of *calumnia* appears. Then it is ordered what happens when a Venetian sues a Byzantine, and after that a clause referring to the oath of *calumnia* is included in connection to the lack of documentary proof. This is followed first by the 'criminal' law provisions and some provisions of law of procedure dealing with deadlines, then matters of succession law and finally the sanctions. I quote below the two abstracts referring to the oath of *calumnia* and the translation I suggest. The first refers to the case in which the plaintiff is Byzantine and the defendant is Venetian:

Venetico reo donare debente Greco actori calumpnie sacramentum, ipso Venetico solo iurare debente decisionis cause sacramentum, ita, quod integre decisionis cause sacramentum Veneticus Greco possit reffere, si vult, prout et de hoc prudentissimi legati Veneticorum meum deprecati sunt imperium.[406]	The Venetian defendant has to give to the Byzantine plaintiff the *sacramentum calumniae*,[407] whereas only the Venetian defendant himself has to swear the decisive oath [*sacramentum decisionis causa*],[408] so that the Venetian can justly request from the Byzantine that he take the decisive oath [*decisionis causa sacramentum*], if he wants, according to the wish that the most skilled representatives of Venice have directed at my Majesty.[409]

[404] For a better overview, see Appendix,1 which includes the translation of the legal part of the chrysobull of Alexios III Angelos in 1198 (Reg. 1647).
[405] See above 7.2.1.1.
[406] Pozza and Ravegnani, *I trattati*, p. 134, lines 11-16, no 11.
[407] The term in Greek would have been "συκοφαντικός ὅρκος". Presumably it means that it is the Byzantine plaintiff who would have to swear the *sacramentum calumniae*.
[408] The term in Greek would have been "τέλειος ὅρκος".
[409] Because of the two techical terms used here (the *sacramentum calumniae* and the *decisionis causa sacramentum*) it is difficult to make a good translation. What I think is described here is, in any case, an exchange of oaths; it seems that the one party, the defendant in this case, when asked to take the desicive oath (*decisionis causa sacramentum*) can also request that the plaintif take this oath.

The emperor then orders what happens in a civil case when the plaintiff is Venetian and the defendant is Byzantine, adding:

Scripto vero actori non existente, secundum ipsum ius et actor Veneticus iudicabitur, et donabitur quidem et ea[410] (ab eo Greco calumpnie sacramentum. Iurabitur autem et ab ipso Greco ipsum decisionis cause sacramentum ita, quod quidem Venetis possit referre e contra.[411]	If, however, a written act does not exist for the [Venetian] plaintiff, the latter will be judged according to the same law,[412] and he will be given by the Byzantine defendant the *calumniae sacramentum*. And the Byzantine defendant himself takes the decisive oath [*decisionis causae sacramentum*], in such a way that he can give it back to the Venetians and vice versa.

It is clear from this abstract that the clause of the oath of *calumnia* refers to the procedure of the furnishing of proofs. What is said, more or less, is that if a document exists, the case will be settled on the basis of this document;[413] if, however, such a document does not exist, the procedures of the oath against vexatiousness and of the decisive oath will take place. Also the first clause of the oath of *calumnia*, quoted some lines above, refers to the procedure of the furnishing of proofs even if no phrase is included such as, "if a written act does not exist...". This phrase is probably omitted because it is taken for granted given the whole structure of the legal part of the chrysobull. The emperor orders what happens in civil cases when a Byzantine sues a Venetian and when a Venetian sues a Byzantine; moreover, he specifies what happens in such cases when a document exists (for instance, when a case is judged according to this document) and when a document does not exist (for instance, when the oath against vexatiousness and decisive oath procedures are administered).

Hence, the terms *sacramentum calumnie* and *sacramentum decisionis* which would be translated in Greek as "συκοφαντικός ὅρκος" and "τέλειος ὅρκος" respectively are used here as technical terms and are connected to a procedure undertaken during the furnishing of proofs: if the plaintiff cannot provide a document, this procedure will take place. It is interesting to see how these two terms, which derive from a Roman law procedure, were developed and adopted into rather recent civil legal procedures. The *sacramentum calumnie* or oath against vexatiousness is also known as the "oath of the justice of one's cause". In his well-known *Jurisprudenc*e, the Dutch jurist Ulrik Huber

410 The "ea" here is problematic.
411 Pozza and Ravegnani, *I trattati*, p. 134, lines 22-26, no 11.
412 I think that here, the emperor means the law as above, namely, that which he has already mentioned for the *calumnia* procedure when the plaintiff is Byzantine and the defendant Venetian.
413 See above 7.2.1.2.

(1636-1694) observes that this oath can be general or special.[414] In civil law procedure, the decisive or decisory oath (the *sacramentum decisionis* in Latin) was an oath by which a case could be decided if one of the parties of the suit could not prove his charge; in such a case he offered to his adversary the chance to take this oath. If the latter refused to take the oath, it meant that the charge was confessed by him.[415] I quote another definition of the *sacramentum decisionis*:

> "Decisive oath:
> An oath by a party in a lawsuit, used to decide the case because the party's adversary, not being able to furnish adequate proof, offered to refer the decision of the case to the party (also termed decisory oath)."[416]

Therefore the decisive oath takes its name from the fact that it decides the case: in cases where there is a lack of evidence the decision of the judge is given based on this oath. When describing different kinds of oaths, Huber also refers to the decisive oath.[417] Further on, he adds that a person who brings the oath by which a lawsuit will be terminated, must first swear the oath of just cause (namely the oath of *calumnia*) himself and here Huber refers to a part of the *Digest*.[418]

As I have mentioned earlier, all of these legal provisions for cases arising between Venetians and Byzantines are regulated as a result of a request on the part of the Venetians to the emperor. It is, therefore, the Venetians who want to introduce this practice in civil cases between Venetians and Byzantines. This is stated very clearly in the text of the chrysobull referring to the

---

414 Huber, *Jurisprudence*, vol. 1, p. 515, chapter 22 (of Oaths), sections 18 and 19: "18. The general oath is taken in various circumstances, when parties accuse each other of evil intentions, for instance; in the Canon law it is called the "oath of malice", that is, of evil or fraudulent intentions, and is taken for all kinds of incidents. 19. The special (oath) is when parties come to the proof, and propose and answer questions to each other under oath. This is called the "oath of calumny", and is taken when parties in a case depending on facts state interrogatories for each other to answer. In that case each must take an oath, the object of which is that they will put forth and answer the interrogatories not to annoy each other, but to defend the justice of their cause….".

415 C. 4,1,12. See Burrill, *New Law Dictionary*, p. 908.

416 *Black's Law Dictionary*, p. 1101.

417 Huber, *Jurisprudence*, vol. 1, p. 515, chapter 22 (of Oaths), section 23: "23. Next comes the oath for the termination of a suit (this must be the decisive oath he refers to), which is either imposed upon and tendered to the one party by the other, or is administered by the Judge to one or other of them…".

418 Huber, *Jurisprudence*, vol. 1, p. 517, chapter 22 (of Oaths), section 37: "37. He, who imposes the oath with a view to finishing a lawsuit, must first himself take the oath of just cause, namely, that he demands the oath from his adversary not to annoy him, but because he believes himself to have a righteous case. If such an oath is not first taken, the other party has a ground for refusing the oath imposed upon him; [here he refers in a footnote to D. 12,2,34,4] and there are causes for such refusal…".

procedure of *calumnie sacramentum* and *decisionis sacramentum*. After the procedure is described, it is mentioned that this is made according to the wish that the Venetian envoys have expressed to the emperor.[419] This is interesting information because it proves that the Venetians proposed a legal procedure to the Byzantine emperor. The main question that arises is: what did the Byzantines understand by the procedure proposed by the Venetians? As we have seen, the Byzantines were also familiar with the procedure of the oath against vexatiousness and the decisive oath in a trial and hence, they were in a position to understand the legal request of the Venetians. In other words, this procedure, which had its roots in Roman law, existed in both legal systems: in Byzantine and Venetian, in the East and in the West respectively. Roman law acted, after all, as means of unifying the different legal systems that had developed in the East and in the West after the fall of the Western Roman Empire. The information about the oath against vexatiousness and decisive oath in this document is an indication that, at least from the end of the 11th century, when this chrysobull was issued, Byzantines and Venetians were able to communicate legally with each other on the basis of Roman law.

[419] "..prout et de hoc prudentissimi legati Veneticorum meum deprecati sunt…" in Pozza and Ravegnani, *I trattati*, p. 134, lines 14-15, no 11.

7.2.4 'Criminal cases'

Some preliminary remarks are necessary here, as the term 'criminal law' could be misleading. Criminal law, as it is understood today, is when the State prosecutes a person because of an offence; this is clearly different from private action taken against the wrongdoer. However, in Roman and Byzantine law, the distinction between civil and criminal law was rather blurred. The crucial question here is whether we are indeed dealing with issues that fall within the field of criminal law, as we understand it today. According to the *Institutes* of Theophilos, a person who is insulted can bring the *iniuriarum actio* criminally, or for damages, that is to say civilly (ἐγκληματικῶς κινεῖν τὴν INIURIAM ἢ χρηματικῶς ἤτοι πολιτικῶς).[420] In the *Ecloga Basilicorum*, the commentator explains that public crimes (δημόσια ἐγκλήματα) are those in which any person can raise actions, such as in the case of homicide, for example; private crimes, that is, civil crimes (ῥιβάτα δὲ ἤτοι ἰδιωτικὰ), on the other hand, are those in which only the damaged person can raise actions, such as, for example, theft and insult.[421]

In the following excerpt from the chrysobull, references are made to both homicide, which is considered a public crime, and to insult, which is considered a private crime. Note also in this excerpt that when the crime of homicide or severe injuries is described, it is mentioned that the competent judge will investigate the case; but when a mild injury or an insult is involved, it is mentioned that it is the victim who must bring the case before a judge. So, whereas homicide falls within the field of criminal law, mild injuries and insult may give rise to civil actions; in that case they are usually called 'delicts.' This explains why I have used inverted commas with the term, 'criminal law'. The emperor orders in the following that:

Preterea quidem, si de seditione vel repugnatione inter Grecum et Veneticum existente moveatur causa, magna quidem existente seditione et ad multitudinem deventa et ad homicidium forte perveniente aut magnas plagas, tunc cancellarius vie, vel eo a magna urbe absente, tunc praeses in palatio Vlachernarum primiceriorum et stractiorarum huiusmodi perscrutabitur causam, et, ut ab eo cognoscetur solvet et ulciscetur; parva vero et ad unum vel duos deducta, si quidem vulneratus plagam mediocrem sustinens aut

Moreover, if there is a case between a Byzantine and a Venetian due to a fight or an opposition, if it is a strong fight that escalates and ends perhaps in homicide or severe wounds, the *logothetes tou dromou* or, if he is absent from the great city [Constantinople], the head of the *primicerioi* and the *stractiorarioi (stratiotarioi)* in the *Blachernae* palace, will examine a case of this kind, and he will solve it and punish according to his findings; if it is a minor disturbance including just one or two people, if it is a Venetian who has suffered a mild wound

[420] *Theophili Paraphrasis*, 4,4,10.

[421] *Ecloga Basilicorum*, p. 244, lines 25-29 (comment on B. 7,2,32,6 = D. 4.8.32.6).

iniuriam Veneticus fuerit, apud tunc cancellarium vie, vel eo a magna urbe absente, apud tunc magnum logariastam querelam proponat, et secundum leges vindictam habebit.[422]

or injury, he will bring the complaint before the *logothetes tou dromou* of that time, or if he is not present in the great city [Constantinople], before the *megas logariastes* and he [the Venetian accuser] will receive retribution according to the laws.

The distinction made here is also based on the gravity of the crime, namely whether it is a severe or a mild crime. It is provided that, if a severe crime occurs between a Byzantine and a Venetian, the competent judge is the *logothetes tou dromou* and, in his absence, this duty falls to the head of the "*primicerioi* and of the *stratiotarioi*" who are present at the palace of *Blachernae*.[423] Since no distinction is made here as to whether the victim is Byzantine or Venetian, I assume that said provisions are valid for both eventualities. In the case of a mild offense, if the Venetian is the victim he will file his complaint before the *logothetes tou dromou* and, if he is absent, before the *megas logariastes*. In the original Greek text, the legal term, "vindictam habere" could have been the expression "ἐκδίκησιν ἔχειν". The emperor adds that:

Si vero Grecus fuerit idiota quidem, et non ex senatus consulto[424] aut de clarioribus hominibus curie imperii mei consistens, apud legatum Veneticorum et sub eo iudices de iniuria et dedecore movebunt[425] causam, et ab istis suscipiet vindictam.[426]

If however, there is a Byzantine common person who does not belong to the senate nor to the splendid men who form the court of my Majesty, he will bring the case for injury and dishonour before the representative of the Venetians and his judges, and he will receive retribution from them.

The term *causam movere* is used to indicate that a trial has begun, the reconstruction of which, in Greek, could have been, for example "δίκην κινεῖν." Hence, also for 'criminal cases' jurisdiction is granted in some cases by the emperor to the Venetian representative and his judges in Constantinople. We

[422] Pozza and Ravegnani, *I trattati*, p. 135, lines 3-9, no 11.
[423] From the Komnenian time, the palace of *Blachernae* had become the residence of the emperor, see *ODB*, vol. 1, p. 293. On the *primicerioi*, see *ODB*, vol. 3, pp. 1719-20.
[424] The term "ex senatus consulto" must have been an error made by the translator, as the correct form must have been "ex senatu". As I have mentioned in an earlier chapter, this mistake is a characteristic example of how 'mechanical' the translation of these documents could be. See chapter I,3.
[425] As far as the translation is concerned, it is better to accept the form "movebit" suggested in the other manuscript because it is singular and the phrase makes more sense. See Pozza and Ravegnani, *I trattati*, p. 137, footnote bz, no 11.
[426] Pozza and Ravegnani, *I trattati*, p. 135, lines 13-16, no 11.

have already seen that for civil cases this jurisdiction was based on whether the defendant was Byzantine or Venetian. In instances where the defendant was Byzantine and the plaintiff was Venetian, the case would come before a Byzantine judge, whereas in those instances when the defendant was Venetian and the plaintiff was Byzantine, the case would come before the Venetian judge in the Byzantine capital. In 'criminal cases' however, jurisdiction was not based on the nationality (Venetian or Byzantine) of the accused, as one would expect having taken into account what was ordered in civil law cases. So, in addition to the gravity of the crime, the criterion here is the class to which the Byzantine victim belongs. If he does not belong to the senate or to the imperial environment, he will have to bring his case before the Venetian judges.

It is not clear for which cases the Byzantine accuser who does not belong to a higher class can bring his accusation against a Venetian before the Venetian judge in Constantinople. According to this text, this is ordered for cases of insult (*movebit causam de iniuria et dedecore*)[427] but it is not certain whether this applies only for minor 'criminal' cases or also for severe cases, such as homicide. Since nothing is mentioned for instances of homicide, we can conclude that only in minor cases, such as injuries and cases of dishonour as described above, can the Byzantine who does not belong to a higher class bring his accusation against a Venetian before the Venetian judge.

This abstract of the chrysobull raises another question: when a Byzantine not belonging to a higher class is accused by a Venetian, is the Byzantine in that case to be judged by the Venetian judge or not? I think that this question should be answered negatively. In the abstract of this document it is mentioned "..Grecus…de iniuria et dedecore movebit causam...", which means that only the Byzantine can raise a case of insult. Nothing is mentioned about a Venetian bringing a 'criminal' case *against* a Byzantine before the Venetian judge. I conclude that only Byzantines who do not belong to a higher class, and who accuse a Venetian, will have to bring their case before the Venetian judge in Constantinople.[428] With regard to 'criminal law' provisions, the emperor concludes with the belief that the Venetian judges will award justice in a sensible way and they will respect the corresponding oaths that they have taken:

Diligenter enim imperium meum confidit, quod super huiusmodi capitulis sacramenta pro iusticia intervenientia Venetici, quibus iudicium est comissum, non despicient, immo similiter et in huiusmodi causis iusticiam custodient,	My Majesty is earnestly confident that the Venetians, to whom judgment is entrusted, will not disregard the oaths regarding such issues that they have taken in the interest of justice; on the contrary, they will similarly safeguard justice in

[427] Pozza and Ravegnani, *I trattati*, p. 135, lines 15-16, no 11.

[428] This interpretation is also more logical, since it would have been rather strange to accept that, in instances when a Byzantine is accused (even if he does not belong to a higher class) he would have been judged by the Venetian judge, given that in civil law provisions the Venetian judge is allowed jurisdiction only when the defendant is Venetian.

quemadmodum et in peccuniariis, et non tantum honorem vel dedecus sive proficuum vel dampnum Veneticorum curabunt, quantum eorum sacramenta, que ab eis pro iusticia fient, in omnibus bene custodire et observare.[429]

cases of this kind too, just as they also do in civil cases, and they will not so much pay attention to honour or disgrace or advantage or damage of the Venetians, as keep and observe their oaths well in all respects, which will be taken by them in the interest of justice.

Regarding the legal terminology used here, the expression "dedecus dampnum curare" could have been something like "ζημίαν θεραπεύειν" in Greek.

[429] Pozza and Ravegnani, *I trattati*, p. 135, lines 16-23, no 11.

7.2.5 Table with an overview of competent judges in civil and criminal cases between Byzantines and Venetians

CIVIL CASES	**Plaintiff**	**Defendant**	**Competent judge**
	Byzantine	Venetian	Venetian representative in Constantinople
	Venetian	Byzantine	The *logothetes tou dromou* or, if he is absent, the *megas logariastes*
'CRIMINAL CASES'	**Victim**	**Description of crime / delict**	**Competent judge**
	No reference on who the victim is (whether he is Byzantine or Venetian)	Homicide or severe wounds	The *logothetes tou dromou* or, if he is absent, the official at the *Blachernae* palace
	The victim is Venetian	Mild injuries	The *logothetes tou dromou* or, if he is absent, the *megas logariastes*
	The victim is a Byzantine who does not belong to the high class	Insult	The Venetian representative in Constantinople

7.2.6 Deadlines

The emperor adds in the following section that in order to accelerate henceforth the trials between Venetians and Byzantines, a novel of Manuel I Komnenos will be applied in these cases with regard to deadlines:

Ne autem longa sequetur mora in iudiciis inter Grecos et Veneticos futuris, nec libelli dies nec interdictorum usque in viginti vel triginta, prout comuniter secundum leges tenetur, connumerari meo placet imperio, sed secundum novam constitutionem sempiterne memorie imperatoris et dilecti patrui imperii mei, domini Manuhelis Comnani, factam de iudiciis, que inter extraneos et indigenas cives conversantur.[430]	In order to avoid long delay in future trials between Byzantines and Venetians, it is my imperial wish that there shall not be counted up to twenty or thirty days of neither *libellus* nor of *interdicta*, as is generally observed according to the laws, but trials between foreign and native citizens must be conducted according to the new constitution of the emperor of everlasting memory and beloved uncle of my Majesty, *kyr* Manuel Komnenos.

It is well known that Manuel Komnenos issued a novel in 1166 on court procedure.[431] The aim of this law was the acceleration of court procedure. In it, the emperor regulated issues such as court sessions, duties of the defendants and the advocates, lawsuits and their time of termination, disputes settled by oaths, executors and other issues. In that novel, the emperor orders, amongst other things, a shorter time for summonses: he provides that there are to be 3 summonses (προκλητικά) for the acceptance and promising of oaths but at 15 day intervals and not 30 days, as it had been in the past. Dölger suggests that this is the novel of Manuel I Komnenos that is implied in this chrysobull.[432]

However, I will agree at this point with Macrides who states that this is not the novel to which this chrysobull refers, since as we saw some lines above, in our document reference is made to a novel by Manuel I Komnenos that regulates in particular matters between foreign and native citizens, whereas the novel that Dölger suggests, regulates general matters of court procedure.[433] After investigating the preserved laws of Manuel I Komnenos, I have not been able to trace a novel with such content;[434] it seems, therefore, that this law has

[430] Pozza and Ravegnani, *I trattati*, p. 135, line 23 – p. 136, line 3, no 11.
[431] Reg. 1465. For this novel, see Macrides, *Justice*, pp. 99-104.
[432] Dölger, *Regesten*, p. 327.
[433] See Macrides, *Justice*, p. 176, footnote 179.
[434] Laws of Manuel I Komnenos which refer to legal matters are the following: Reg. 1369, year 1147 possibly (about the oath in a trial); Reg. 1426, year 1158 (about rescripts); Reg. 1465, year 1166 (about law of procedure); Reg. 1466, year 1166 (about feast days and

not been preserved. In any case, what is interesting to note here is that the emperor applies Byzantine law for the Venetians at this point in our document. This Byzantine law however, is also valid for other foreigners, since, as the emperor mentions, this law applies in trials that arise between foreigners and Byzantines.

courts); Reg. 1467, year 1166 (about criminal law); Reg. 1469b [1468], year 1166 (about family law); Reg. 1536, year unknown (about Jews and by whom they will be judged).

7.2.7 Law of succession

According to this chrysobull, the Venetian envoys made another request to the emperor regarding succession law, which the emperor approved:

Insuper et aliam petitionem sepius declaratam prudentissimi legati ad meum fecerunt imperium iustissimam et meo acceptabilem imperio. Pecierunt enim, ut Venetico in aliqua regione imperii mei moriente nullam practori terre ad bona defuncti Venetici fieri accessionem, immo secundum placitum Venetici defuncti eius dispensentur res vel ab eius fidecomissariis, si testamentorie contingit eum obiisse, vel ab iis qui reperirentur tunc ibi Veneticis.[435]

Moreover, the most skilled representatives have also frequently made another request, which is most just and agreeable to my Majesty. They requested in fact that, when a Venetian dies in a place of my Majesty, the fiscal officer will have no access to the estate of the deceased Venetian; on the contrary, the estate will be dealt with in accordance with the wish of the deceased Venetian, either by his fideicommissaries, if he happens to have died with a testament, or [if he has died *intestate*] by the Venetians who live there at that time.

The emperor accepts this request of the Venetian envoys and orders the following:

Annuit igitur imperium meum et tali eorum peticioni, et per presens scriptum auro signatum chrysobolum verbum iubet, nulli in tota Romania aliquod dominio exercenti, sive practor provincie sit, sive villicus personalis vel monasterii aut ipsorum intimorum cognatorum imperii mei, et ipsorum etiam felicissimorum sevastocratorum et cesarum vel dilectorum liberorum imperii mei aut ipsius dilectissime mee auguste, licere ullo modo in Veneticorum defunctorum res manus inmittere, et aliquid ex eis usque a unum obolum accipere, sed intacta omnino custodire tam a manu dimosii quam a manu personarum et monasteriorum, potestati defuncti vel procuratorum eius sive ab intestate heredum custodita.[436]

My Majesty therefore agrees to this request of theirs, and orders by the present document and gold-sealed chrysobull: to no one who has any authority in the whole of Romania, be he a provincial officer, or an overseer in the service of a person or of a monastery or of persons intimately connected to my own Majesty, or even of the most fortunate *sebastocrators* and *caesars* or of the beloved children of my Majesty or of my most beloved (wife the) *augusta*, it is allowed in any way to have dealings with the estate of deceased Venetians, and to accept anything from it, even one penny (*obolon*), but they should keep [everything] wholly intact, neither the public sector nor a person or a monastery may touch it and it will be kept for the power of the deceased or of his

[435] Pozza and Ravegnani, *I trattati*, p. 136, lines 4-10, no 11.
[436] Pozza and Ravegnani, *I trattati*, p. 136, lines 10-21, no 11.

representatives or of his *intestate* heirs.

A first conclusion that can be drawn from these excerpts is that before this chrysobull, when a Venetian died within the Byzantine Empire, his estate was winded up by Byzantine officials and presumably the result was that part of that estate, or the whole of it, ended up in Byzantine hands. By accepting the request of the Venetians, the emperor thus agrees to the following: the property of the deceased will not pass immediately to the Byzantine state (this must be an indication that previously this practice did happen). If there is a testament, the property will be distributed according to that and, if no testament exists, the Venetians living there will decide what to do with the property. They will be responsible for winding up the estate; they will act, in other words, as executors.

According to Byzantine law, if someone died without a testament, his estate was inherited by his relatives. As in modern law, the successors were divided into classes according to who was closest to the succession line of the deceased. Justinian had proceeded into reforms in the law of intestacy. There was a succession order of five classes and if no person was found in any of these classes, the property of the deceased passed to the state as unclaimed property (*bona vacantia*).[437]

According to the *Ecloga*, the law of Leo III and his son Constantine V in the 8th century, there were seven classes. In general, one could say that first in the succession line were the descendants of the deceased, followed by his parents and close relatives. In the *Ecloga* it is also mentioned that in the sixth class, where there was a widow and no relatives, she was entitled to half of the property and the other half passed to the state.[438] In the seventh class, which was the last class, where the deceased had no relatives and no surviving spouse, the state received all of the property.[439] In these provisions of Byzantine succession law, the state earned a considerable income from the property of the deceased. What is interesting is that the state was not only entitled to receive the property of the deceased in the last class, when no relative or wife existed, but also in the sixth class and in a strong proportion, that is half of the property of the deceased.[440] However, our documents date from the 11th and 12th

[437] Kaser, *Römisches Privatrecht*, p. 510.

[438] On the financial status of the surviving spouse in Byzantine law in general, see Papadatou, *Philotimiai*.

[439] *Ecloga*: 6,2 (414-418)"...εἰ δὲ οὔτε συγγενεῖς εἰσίν, ἔστι δὲ γυνὴ τοῦ τελευτήσαντος, τὸ μὲν ἥμισυ μέρος τῷ ἁπάσης αὐτοῦ τῆς περιουσίας ἐκείνη κληρονομείτω, τὸ δὲ ἕτερον ἥμισυ μέρος τῷ δημοσίῳ εἰσκομιζέσθω. εἰ δὲ οὔτε γυνὴ τῷ τελευτήσαντι ὕπεστι, τότε τὴν ἅπασαν τοῦτου περιουσίαν ὡς ἀκληρονόμητον τῷ δημοσίῳ, ὡς εἴρηται, εἰσκομίζεσθαι..." in Burgmann, *Ecloga*, p. 194; see also Zachariä von Lingethal, *Geschichte*, pp. 136-138.

[440] Legal Byzantine sources relevant to succession without a testament are also, for example: B. 45, especially B. 45,3,8 = Nov. 118 (BT 2099/7 -2103/8). *Peira*: 48,1-12 in Zepos, *JGR IV*, pp. 194-96. Here, however, there are no general rules on how the succession will take

centuries and we should therefore be cautious with the Isaurian *Ecloga*; it is better to also take into consideration legal sources contemporary to our acts.

At this point it is worth mentioning an act by Alexios I Komnenos in 1082 which refers to a matter of *intestate* succession and gives a clearer picture of what happened in practice in this field of law.[441] It is a decree addressed to Michael Skleros, the judge in service of the districts Thrace and Macedonia. In that act, the emperor mentions, amongst other things, that when someone dies without a testament and without children, many people take advantage of this and use the property of the deceased although it does not belong to them and, hence, the state is deprived of this income.

First of all, the main problem described here is the non-application of the law. The emperor therefore orders this judge to take care of this situation as follows: he has to make known to the people within his district that, if someone is aware of such a situation and he announces that to the judge, he, namely the person who made the announcement, will receive a tenth of the property concerned as a reward.[442] The judge in such a case is also asked to write down an inventory of all the deceased's property, both movable and immovable and submit it to the imperial offices and wait for an answer.[443] Two main conclusions can be drawn from this example. Firstly, that the state could have had a considerable income from persons who died without a testament and without children and that is why the emperor is concerned with 'guarding' that property. Secondly, that in *intestate* succession cases the property of the deceased was more vulnerable to unjustified interference by people who intended to take possession of that property although they were not entitled to it.

However, in order to understand and evaluate the provisions about succession law in this chrysobull, it is also important to consider the question of what happened to other foreigners in matters of succession law. The preserved sources here are extremely limited and cannot give us a clear picture on this issue.[444] For example, in *Peira* we read of a case involving a deceased man who

place without a testament but reference is made to some specific cases, which the judge Eustathios Rhomaios had dealt with in respect of this matter of succession law.

[441] Reg. 1083.

[442] "Επεὶ δὲ ἀνέμαθε καὶ τοῦτο ἡ βασιλεία ἡμῶν, ὡς πολλοὶ ἄπαιδες καὶ ἀδιάθετοι θνήσκουσι, μηδένα ἔχοντες κατὰ τὸ ἐξ ἀδιαθέτου δίκαιον καλούμενον εἰς τὴν κληρονομίαν αὐτῶν, ἕτεροι δὲ αὐτονόμως ἐξιδιοῦντες καὶ σφετερίζοντες τὴν μηδόλως ἀνήκουσαν τούτοις ἐκείνων ὕπαρξιν, καὶ στερεῖται ὁ δημόσιος τῶν δικαίῳ λόγῳ ἁρμοζόντων αὐτῷ· κελεύει σοι ἔχειν προσοχὴν καὶ περὶ τούτου, διαλαλήσαντι δὲ καὶ ἐν ὅλῃ τῇ περιχώρῳ τοῦ ὑπό σε θέματος, ὡς εἰ κατά τι μηνυθείη ὑπό τινος ὡς τοιοῦτον, λήψεται τὴν δεκάτην μερίδα τῶν προσαγγελθέντων ὁ τὴν προσαγγελίαν ποιησάμενος." in Zepos, *JGR*, vol. I, p. 297, col. IV, Nov. 20, Reg. 1083.

[443] "…ὀφείλεις προσαγγελίας γενομένης ἀπογράφεσθαι τὴν ὕπαρξιν τοῦ τελευτήσαντος ἐν λεπτῇ ἀπογραφῇ, εἴ τι ἐν κινητοῖς καὶ παρατιθέναι ταύτην τῶν εὐλαβῶν ἐγχωρίων, μέχρις ἂν σὺ ἀκινήτοις ἀναδιδάξῃς καὶ γράψῃς πρὸς τὸ τοῦ βεστιαρίου σεκρέτον καὶ τὴν βασιλείαν ἡμῶν ὡς ἂν τὸ δοκοῦν αὐτῇ γένηται." in Zepos, *JGR,* vol. I, p. 297, col. IV, Nov. 20, Reg. 1083.

[444] See Laiou, *Institutional mechanisms*, pp. 161-181, who also discusses the issue of justice and foreigners.

was a foreigner and had left a testament. By this testament he left to his second wife practically everything and to his daughter from his first marriage a very small part of his estate, something that was against Byzantine and Roman law.[445] As we are informed, the judge did not apply the testament because this foreigner had lived within the Byzantine Empire, had held an important imperial office and was given considerable grants. For this reason, the judge Eustathios believed that the foreigner should be subject to Byzantine law and his estate was not to be administered (διατίθεσθαι) according to foreign rules.[446] The judge added that even if the foreigner did not exactly know the law (τὴν τὸν νόμον ἀκρίβειαν), he was in a position to ask about it and find out what the Byzantine laws were.[447] In other words, he was expected to know the law and this reflects, in a way, the principles *error iuris nocet* and *ignorantia legis non excusat* of Roman law, which mean respectively that a mistake of the law has an injurious effect and ignorance of the law is no excuse. Hence, if the deceased man had not held an important imperial office and had not accepted grants and he was not in a position to inquire as to what the Byzantine law was, then his testament made according to foreign law, would have been valid. This is concluded from *a contrario* interpretation of Eustathios' judgement.

Another testimony from the 12th century, namely a canonical answer by the canonist Balsamon to the question posted by the patriarch of Alexandreia, Mark, is interesting to consider. Balsamon explains that the rule is that Romans should be governed by Roman law and that Romans are required to know the law. However, he adds that this rule definitely applies to the inhabitants of the imperial city "fortified by bastions" (at his time, Constantinople) because this city "is rich in jurists". For those who live outside the imperial city, the situation is different. These people are not always in a position to find out what the law is and therefore they are "forgiven for being ill-informed". However they should also make an effort to find out what the law is and if they do not

[445] About the *querella inofficiosi testamenti* and the introduction of the *ad supplendam legitimam* by Justinian, see Kaser, *Römisches Privatrecht*, pp. 515-523. In brief, the difference between both of them is that by the first action the heir who has been excluded by the testament can ask for annulment of the testament, whereas by the *ad supplendam* the heir that has received less than his legitimate portion can ask for the rest of his portion. Before Justinian, the heir who had inherited less than his legitimate portion could bring the *querella* against the person who inherited the estate; after Justinian he could only bring forth the *ad supplendam* and the *querella* was only possible when the heir was excluded in whole.

[446] *Peira*: 14,16 in Zepos, *JGR*, vol. IV, p. 47: "… καὶ ἐσημειώσατο ὁ μάγιστρος οὕτως· ὅτι ὁ διαθέμενος, εἰ καὶ βαρβαρικοῦ γένους ἦ, ἀλλὰ τῇ ῥωμαϊκῇ βασιλείᾳ προσεληλυθὼς καὶ ἀξιώματι μεγάλῳ τιμηθεὶς καὶ πολλῶν δωρεῶν ἀξιωθείς, ἀνάγκην εἶχε τοῖς ῥωμαίων ἕπεσθαι νόμοις καὶ μὴ ἐθνικῶς διατίθεσθαι…. " Laiou also refers to this case in Laiou, *Institutional mechanisms*, p. 164.

[447] *Peira*: 14,16 in Zepos, *JGR*, vol. IV, p. 47: "εἰ γὰρ καὶ μὴ ᾔδει τὴν τῶν νόμων ἀκρίβειαν, ὅμως εἶχε τοὺς ὀφειλόντας ἐρωτᾶσθαι καὶ διδάσκειν τὸ δέον αὐτὸν. καὶ διὰ τοῦτο πρὸς τὴν νομικὴν ἀκρίβειαν καὶ γνώμην τὰ τῆς διαθήκης ἰθύνθη."

succeed they will be excused.[448] Balsamon's point is different than that of Eustathios, the legal base is namely different but both cases are related to the issue that a Roman citizen is not excused for not knowing the law.

From the information in this chrysobull, it is clear that at least before this chrysobull was issued, when a Venetian died within the empire, not only was his testament not taken into consideration by the Byzantine officials but presumably part of his estate (or even possibly the whole of it) ended up in Byzantine hands. This information is strengthened by the following source. In 1166 a Pisan living in Constantinople, named Hugo Etheriano, sent a letter to the consuls of Pisa informing them about the inheritance of an important Pisan merchant who had died there. He mentions that the Byzantine state intended to confiscate a part of this estate but the brother of Hugo, named Leo Tuscus, who was a distinguished interpreter and was close to the imperial environment interfered and therefore the confiscation did not take place.[449]

Based on this source and the provisions of the chrysobull of Alexios III Angelos to Venice, the conclusion is that the property of a foreign deceased merchant within the Byzantine Empire could be claimed by the Byzantine fisc. The Venetians are the first foreigners (and actually the last ones, since some years later Constantinople is sacked by the Crusaders), who asked the Byzantine emperor for exemption from this practice. As Laiou has suggested, this Venetian request must not have been irrelevant to similar provisions on *intestate* law that were included in the privilege charters of the Crusader kings at that time.[450] The first such provisions are included in the privilege charter of Baldwin I of Jerusalem to the Genoese in 1104 and in the Pactum Warmundi, a treaty between the Kingdom of Jerusalem and Venice in 1123-24.[451]

---

[448] In *RhP*, vol. 4, p. 451/3-23: "Ἐρώτησις δ' Τὰ ἑξήκοντα βιβλία τῶν νόμων, τὰ λεγόμενα βασιλικά, οὐ διεδόθησαν εἰς τὰς χώρας ἡμῶν. δια τοῦτο νυκτοβατοῦμεν ὅσον τὸ εἰς αὐτά. Ζητοῦμεν οὖν μαθεῖν εἰ ἐντεῦθεν κατακρινόμεθα. Ἀπόκρισις [...] Οἱ γοῦν αὐχοῦντες βίον ὀρθόδοξον, κἂν ἐξ Ἀνατολῶν ὦσι κἂν ἐξ Ἀλεξανδρέων κἂν ἑτέρωθεν, Ῥωμαῖοι λέγονται καὶ κατὰ νόμους ἀναγκάζονται πολιτεύεσθαι. Τῷ νόμῳ δὲ τῷ φάσκοντι, "Οὐ δεῖ Ῥωμαῖον ἄνδρα νόμον ἀγνοεῖν", οὐ συσφίγγεται. Μόνοι γαρ οἱ κατοικοῦντες τὴν Ῥώμην, τὴν βασιλίδα δηλονότι τῶν πόλεων, τὴν κατησφαλισμένην ὁμοίοις πυργώμασι καὶ πολλοὺς πλουτοῦσαν νομομαθεῖς, ἐκ τούτων σιδηροπέδαις κατέχονται. Διὸ οὗτοι μὲν ἀγνοῆσαι νόμον διενιστάμενοι οὐ συγγινώσκονται, [...] κἂν ἀγύρται τινὲς ὦσι καὶ γραμμάτων ἀνήκοοι, ὡς δυνάμενοι τὰ τῶν νόμων μαθεῖν ἀπὸ τῶν συγκατοίκων αὐτῶν. Οἱ δὲ ἔξω τῆς Ῥώμης διάγοντες, [...] πολλῷ δὲ πλέον Ἀλεξανδρεῖς, νόμον πολιτικὸν ἀγνοήσαντες συγγινώσκονται. Καλὸν γοῦν ἐστι καὶ τούτους ἐρωτᾶν, καὶ μανθάνειν τὰ νομικὰ παραγγέλματα. Εἰ δὲ δυσχερές ἐστι, συγγνώμης ἀξιωθήσονται."

[449] See Classen, *Burgundio*, p. 24. The letter is published in Müller, *Documenti*, pp. 11-13, no X. I have also referred to this interpreter in chapter I, 3, when examining the language and the translation of the acts. The case is more complicated because the deceased was a *burgensis* of the emperor, see on this chapter V, 1.

[450] See Laiou, *Byzantine trade*, pp. 186-187.

[451] Laiou, *Byzantine trade*, p. 186. For similar provisions, see for example, the charter by Baldwin, king of Jerusalem to the Venetians in 1125 in *TTh*, vol. I, p. 92, no XLI and the

According to the charter of Baldwin I of Jerusalem, if some of the allies, namely the Genoese, die within his kingdom, the deceased's property will be distributed according to his will and if there is not a will, his associates, other Genoese, will decide what to do with it.[452] This provision is indeed very similar to the provision of the chrysobull for the Venetians in 1198. In the Pactum Warmundi the succession law provision is also connected to shipwreck provisions. It is ordered that in case a Venetian dies in a shipwreck, his goods will be given to his heirs and the other Venetians.[453] It is finally important to stress that this provision on succession law in the chrysobull is regulated by the emperor upon a request of the Venetians themselves and not as a result of any initiative taken by the emperor. The Venetians asked for and got what they wanted. It is logical that they were influenced by similar provisions from other charters of that time since the problem they face is the same: the estate of a Venetian deceased merchant is at risk. Hence, I completely agree here with Laiou, who believes that the provisions about the estate of a merchant dying outside his country in the privilege charters of the Crusader kings must have influenced similar provisions inserted in this chrysobull.

The provisions in our document in matters relating to succesion law are extremely favourable for the Venetians. If a Venetian dies *intestate* within the empire, the empire will not receive his property, but rather the Venetians living there will decide what to do with it. The fisc is more or less excluded from receiving the deceased's property, since it would seem unlikely that within the Byzantine Empire, no other Venetian had lived in the place where the Venetian died. Moreover, by this provision the emperor also protects the property of the deceased Venetian against malicious Byzantine citizens who might try to take possession of that property, since only the Venetians will be responsible of the distribution of that property. Given that there was an increasing hatred between the Byzantines and the Venetians (a hatred likely based on the generous privileges that the emperors granted to the Venetians), this order of the emperor would have been very useful for the Venetians since it created a safety net for their property. It is also remarkable that the emperor does not limit himself to a general prohibition for fiscal officers not to deal with the estate of a deceased Venetian within the empire, but he makes a list of persons that are not allowed to receive a single *obolon* from this estate, as it is stated.[454] He explicitly mentions that none of his closest relatives, not even the *sebastocrator* (his brother), nor the *augusta* (his wife) nor his own children are

charter by Reynald, prince of Antiocheia and his daugter to the Pisans in 1154 in Müller, *Documenti*, p. 6, no IV.

[452] "Et si forte aliquis vestrorum hominum vel istorum supradictorum ubicumque potestas nostra extenditur vel dilatabitur mortuus fuerit prout ordinaverit res suas (concedam) si autem morte preoccupante absque testamento deciderit socii sui violenter de suo nil auferam…" in *Cod. Dipl. Genova*, vol. I, p. 21, lines 23-28, no 15.

[453] "…Si naufragio mortuus fuerit, suis heredibus aut aliis Veneticis res sue remanentes reddantur…" in *TTh*, vol. I, p. 87, lines 25- 27, no XL.

[454] Pozza and Ravegnani, *I trattati*, p. 136, lines 17-18, no 11.

allowed to access that estate.[455] This provision is rather humiliating for the emperor, who has to put down in writing a prohibition against his own brother, wife and children in order to secure the interests of the Venetians.

Moreover it is interesting to see how this provision regulating the succession law issues of the Venetians within the Byzantine Empire was developed later on. In 1265 Michael VIII Palaiologos concluded a treaty with the Venetians which states that if a Venetian dies within the empire, whether or not he has made a testament, his estate will be taken care by the *bailus* or by his substitute according to the testament (if there is a testament), or according to what the *bailus* and his substitute (if there is not a testament) without any interference of the emperor.[456] The provisions on succession law included in the chrysobull of 1198 directed to Venice are important because they prove that the Venetians were not always subject to Byzantine law but sometimes, as in this case of succession law, a special legal status is formed for them, a status sometimes more favourable than that of an average Byzantine subject, as we saw from these Byzantine legal sources.[457] In terms of international law, it seems that at this point the personal principle is established for the Venetians with regard to issues of succession law. Finally, in this act there is not any information about the formal execution of the Venetian's testament: whether we are dealing with a testament valid according to Venetian or Byzantine law, whether the testament was made in Venice or within the Byzantine Empire and in the latter case, who would have been the competent authority to draw up or ratify the testament.

[455] Pozza and Ravegnani, *I trattati*, p. 136, lines 15-16, no 11.

[456] Reg. 1934. See *MM*, vol. 3, p. 81, lines 7-11, no XX: "῞Ινα ἐὰν Βενέτικος ἀποθάνῃ εἰς τὴν χώραν τῆς βασιλείας μου, εἴτε διαθήκην ποιήσει, εἴτε οὐ ποιήσει, οἰκονομῆται τὸ πρᾶγμα αὐτοῦ παρὰ τοῦ μπαΐλου ἢ παρὰ τοῦ δικαίῳ αὐτοῦ, καθὼς ἂν οὗτος διάθηται, ἢ ὁ μπαΐλος καὶ ὁ δικαίῳ αὐτοῦ ἐπικρίνῃ, καὶ οὐ μὴν εὑρίσκῃ ἐμποδισμόν τινα ἢ ὄχλησιν ἀπὸ τοῦ μέρους τῆς βασιλείας μου…." On the *bailus*, see Maltezou, *Bailos*.

[457] Based on this provision of intestate law, I do not agree with the opinion of Laiou, who states the Venetians "were subject to Byzantine law"; see Laiou, *Byzantine Trade*, p. 181.

7.2.8 Sanctions

The emperor is strict with regard to people who violate the provisions included in the present chrysobull:

Scire autem oportet, ille, qui ausus fuerit contra presens preceptum imperii mei facere, quod in quadruplum reddet ablatum, et per competentem punietur correptionem, tunc vie logotheta existente seu magno logariasta talis capituli vindicte superinvigilare debente et secundum presens preceptum imperii mei vindictam facere.[458]

It should be known: he, who dares to act against the present order of my Majesty will return fourfold what has been taken away, and will be punished by the applicable punishment, and in that case, the existing *logothetes tou dromou* or the *megas logariastes* has to supervise the retribution of this matter and to dispense justice according to this present order of my Majesty.

In the end, the emperor confirms once again his grants to the Venetians under the condition that they will observe their promises of loyalty to the empire:

Omnia igitur, que per presentis chrysoboli verbi ab imperio meo corroborate, ex gratia donate generi Veneticorum imperio meo fidelissimorum, incorrupte et immutate custodita erunt, quousque et Venetici ad imperium meum et Romaniam fidem secundum ea, que ab eis pacta et iurata sunt in supraordinato scripto prudentissimorum legatorum declarata, immutata et incorrupta custodierint. Ad hoc enim et presens chrysobolum verbum imperii mei fidelissimis imperio meo traditum est Veneticis, firmum et inviolatum habere debens.[459]

Everything therefore, that has been confirmed by the present chrysobull by my Majesty, from the donations in favour of the Venetian people, who are most faithful to my Majesty, will be observed justly and unchanged, as long as also the Venetians will keep unchanged and justly their word towards my Majesty and Romania according to what has been agreed and sworn by them and has been declared in the above text of the most skilled representatives. And therefore, the present chrysobull of my Majesty is delivered to the Venetians who are loyal to my Majesty and has to remain valid and inviolate.

The chrysobull ends like any other, namely with an indication of the date and the name of the emperor. As already mentioned, this is the only act in which so many legal matters are provided. Let us not forget that the act was issued in 1198 and the Crusades had already begun. Perhaps this chrysobull was

[458] Pozza and Ravegnani, *I trattati*, p. 136, lines 21-26, no 11.
[459] Pozza and Ravegnani, *I trattati*, p. 137, lines 1-8, no 11.

a last attempt of the Byzantine emperor to 'win back' the Venetians by granting them legal privileges.

CHAPTER III – Acts directed at Pisa[460]

The Komnenian dynasty

1. The chrysobull of Alexios I Komnenos in 1111 (Reg. 1255)

1.1 Introduction

After much negotiation,[461] Alexios I Komnenos granted the first chrysobull in favour of the city of Pisa in 1111. Whereas with Venice, all Byzantine imperial privilege acts were preserved in Latin versions only, in the case of Pisa, most of the acts are preserved in both Greek and Latin. The Greek version of this chrysobull is inserted in the chrysobull of Isaac II Angelos, which can be found in the state archives of Florence.[462] According to Dölger, the chrysobull of Isaac II Angelos must be an original chrysobull and not just a copy, since it has the elements of a chrysobull act; for example, words are written in red ink and it bears the signature of the emperor.[463] This supports the argument that the emperor issued and signed two original chrysobulls: one to be kept at the Byzantine offices and the other given to the Italians to take with them. The chrysobull of Alexios I Komnenos begins with a reference to the negotiations that took place before the issue of the act. After the exchange of envoys from both sides, the Pisans drew up a text expressing their loyalty to the emperor which was confirmed by an oath, the text of which is inserted as a whole in the chrysobull. By this chrysobull, the emperor grants to the Pisans, amongst other things, a yearly allowance to their church, trade exemptions and a landing-stage (*scala*) in Constantinople.[464]

---

[460] For political and commercial aspects of the acts directed at Pisa, see Lilie, *Handel und Politik*, pp. 69-83.

[461] See Reg. 1219, Reg. 1245d [1254], Reg. 1254e.

[462] Archivio di Stato Firenze, Atti Publici [diplom.], n. 17 [1192], Dölger, *Regesten*, p. 307, Reg. 1607. In this chrysobull of Isaac II Angelos we also find the chrysobull of Manuel I Komnenos to Pisa, which is inserted and which will be examined in a later chapter. (Reg. 1499[1400]). However, as Gastgeber points out, the preserved Latin version of the chrysobull of 1111 (Reg. 1255) is not the original translation from 1111 but is rather the translation made in 1192 by the officers of Isaac II Angelos; see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 4, p. 15, where he speaks about the translation of the chrysobull of 1111 (Reg. 1255).

[463] See Dölger, *Regesten*, p. 307.

[464] For a description of all the privileges of the Pisans, see Lilie, *Handel und Politik*, pp. 73-76.

1.2 Legal issues

1.2.1 Oaths and the making of the treaty

In this chrysobull, the oath taken by the population of Pisa is inserted as a whole into the act. From its text it is obvious that the oath was taken by all Pisans and that they are therefore bound by it.[465] The fact that the whole population has swore the oath is confirmed by the expression "ἡμεῖς ὁ ἅπας Πισσαϊκὸς λαὸς", or similar expressions used more frequently throughout the text of the oath.[466] The Pisans promise to be loyal to the Byzantine emperor and to co-operate with the empire in some matters of justice, a promise that will be examined in the next section. At the end of the oath, we find that the oath was sworn in the presence of the archbishop of Amalfi, the Amalfitan judge Moschos and of the consuls of Pisa.[467] It is made clear that these persons also confirmed the oath in writing before a Byzantine envoy named Mesimeres.[468]

Further on in the text, the emperor adds that the Pisans had sent their envoys with a letter proving that they were delegated to negotiate with the emperor and, in particular, that they were given the power to "fill in what was missing".[469] This information is important in investigating the question of the power of the envoys.[470] The envoys in this case had brought with them a letter proving their status, their position to negotiate and the extent of their mandate. The envoys confirmed to the emperor in writing, by oath and with their

---

[465] "Ἐν ὀνόματι τοῦ κυρίου ἡμῶν Ἰησοῦ Χριστοῦ, ἀμήν. ἡμεῖς πάντες οἱ ἔποικοι τοῦ κάστρου καὶ τῆς χώρας Πίσσης ὑπισχνούμεθά σοι τῷ ἁγιωτάτῳ βασιλεῖ κυρῷ Ἀλέξίω..." in Müller, *Documenti*, p. 43, lines 36-39, and the Latin translation on p. 52, lines 29-32, no XXXIV: "In nomine Domini nostri Iesu Christi, amen. Nos omnes habitatores civitatis et terrae Pisarum promittimus tibi sanctissimo imperatori, domino Alexio..."

[466] See Müller, *Documenti*, p. 43, line 41, lines 49-50, and lines 72-73, no XXXIV.

[467] "…τοῦτο γέγονεν ……..ἐνώπιον τοῦ ἀρχιεπισκόπου Ἀμάλφης καὶ Μόσχου τοῦ κριτοῦ Ἀμάλφης, ἐνώπιον τῶν ὑπάτων τῆς Πίσσης." in Müller, *Documenti*, p. 43, lines 79-84 and the Latin translation on p. 52, lines 73-77, no XXXIV: "Hoc factum est…..in presentia archiepiscopi Amalphitani, Musci iudicis Amalphitani et consulum Pisanorum".

[468] "…τούτων οὕτως ἐγγράφως παρ' ἐκείνων καὶ δι' ὅρκου βεβαιωθέντων παρουσίᾳ καὶ τοῦ ἀνθρώπου τῆς βασιλείας μου, τοῦ Μεσημέρη,…" in Müller, *Documenti*, p. 43, lines 85-87 and the Latin translation on p. 52, lines 78-80, no XXXIV: "His itaque per scriptum et sacramentum ab illis confirmatis in presentia et hominis imperii nostri Mesimerii,...". About the missions of Mesimeres, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 32, p. 266, commentary, line 105.

[469] "...καὶ γραφὴν ἀπεκομίσατε πρὸς τὴν βασιλείαν μου, ἣν ἐκεῖνοι πάντες δι' ὑμῶν πρὸς αὐτὴν ἐξαπέστειλαν, καὶ τοῦτο διείληπτο τῇ γραφῇ ἐκείνων, ἵνα τὰ λείποντα ὑμεῖς ἀναπληρώσητε,.." in Müller, *Documenti*, p. 43, lines 93-96 and the Latin translation on 52, lines 85-88, no XXXIV: "...et litteras imperio nostro attulistis quas illi omnes per vos ad ipsum miserunt, et continebatur in litteris eorum hoc, ut ea quae deerant vos adimpleretis...".

[470] I will return to this matter in chapter V,5.

signatures, that the Pisans have taken an oath to observe inviolate all that was agreed with the emperor.

1.2.2 Co-operation of Pisa and Byzantium in legal matters

1.2.1.1 Obligations of Pisa

As I have already mentioned, the oath by which the Pisans promise to be loyal to the emperor contains a number of different components, one of which deals with the obligations of Pisa. In the oath the Pisans undertake the following interesting legal obligation:

…ὑπισχνούμεθά σοι…., καὶ ἐάν τινες ἐκ τῶν ἐποίκων τῆς χώρας καὶ τῶν ἀνθρώπων ἡμῶν ζημίαν ποιήσωσι τῇ βασιλείᾳ ὑμῶν καὶ εἰς Ῥωμανίαν ὦσι καὶ ζητηθῶσι παρὰ τῆς βασιλείας ὑμῶν ἀπ' αὐτῶν, ἵνα διορθώσωνται τὴν ζημίαν δικαίως καὶ συμβιβαστικῶς, καὶ ἐὰν εἰς Ῥωμανίαν οὐχ ὑπάρχωσι καὶ εἰς Πίσσαν ὑποστρέψωσι καὶ ἡμῖν τοῦτο γνωστὸν γένηται,<…>[471] εἰ μὲν ἔχουσι κληρονόμους εἰς Πίσσαν, κατὰ τὴν δύναμιν τῆς ὑποστάσεως τὴν διόρθωσιν <…>[472] ποιήσωμεν δικαίως ἢ μετὰ συμβιβάσεως, πλὴν ὅσον καταληφθῇ ἐκ συναινέσεως καὶ λόγου τοῦ ἀποκρισιαρίου ἢ ἀποκρισιαρίων ὑμῶν….[473]

…promittimus tibi..
Et si ex terrae habitatoribus nostrae et hominibus nostris aliqui damnum imperio vestro fecerint et in Romania fuerint et quesiti ab imperio vestro fuerint, de eis emendabunt damnum iuste et concorditer. Et si in Romania non fuerint et Pisas reversi fuerint et notum factum fuerit, <…> si heredes Pisis habuerint, secundum vires substantiae emendationem <…> faciemus iuste vel concordia excepto tanto, quantum remanebit ex consensu et verbo nuncii vel nuntiorum imperii vestri.[474]

…we promise to you….that, if inhabitants of our land and our men cause damage to your Majesty and they are in Romania and they are 'prosecuted' by your Majesty, that they themselves [out of their own pocket] will repair the damage done justly and by way of agreement, and that, if they are not in Romania and they have returned to Pisa, and this comes to our knowledge, <they will repair the damage; [but], if they have died, and>[475] if they have heirs in Pisa, <they will repair the damage> according to the capacity of the estate <and, if they do not have

[471] There must be a *lacuna* here.
[472] Another *lacuna* appears here.
[473] Müller, *Documenti*, p. 43, lines 38 and lines 52-63, no XXXIV.
[474] Müller, *Documenti*, p. 52, lines 31 and lines 47-57, no XXXIV.
[475] I have used these signs, <> to indicate the *lacunae* in the text, which I have filled in according to my own interpretation of the text. Note that the supposed *lacunae* are identical in the Greek and Latin texts and this proves that they were there before the translation was made.

heirs,> we will repair [the damage] justly or by way of compromise [= in court or out-of-court], but only up to the amount agreed to by your envoy or envoys.[476]

While on the surface, this obligation seems a straightforward case of promising to recover damages inflicted on the emperor, his territories or citizens, there are obvious gaps in the passage which are problematic. The text does not make sense as it stands and, as I will argue, there are what appear to be *lacunae* in the text. These gaps in both the Greek and Latin texts as well as the translation have been indicated with the signs <>. In the translation, I have provided a possible reading of the missing elements of the text based on the context of the oath and textual evidence. In doing so, it appears that the most satisfactory interpretation of this passage is that the city of Pisa has offered to help track down citizens of hers who have caused damage to the Byzantine Empire. Two distinctions are made with regard to these Pisans.

The first consists of Pisans who are in Romania, who may be asked by the emperor to repair the damage done "justly and by way of agreement." The second consists of Pisans who have returned to their native city. Here, however, the interpretation problems begin. The most logical interpretation based on the existing text would be that if those Pisans who have caused damage return to Pisa and this becomes known to the Pisan community, they (namely, the Pisans who have caused the damage) must pay for the damage they caused. Yet, this last phrase is not included in the text and this marks the first *lacuna* that I have indicated in the text. It could be that this phrase is omitted because it is taken for granted that these Pisans will pay.

However, just afterwards, a conditional sentence begins with "if they have heirs in Pisa", which does not make any sense in the text as it stands, marking another gap. Hence, after the phrase "εἰ μὲν ἔχουσι κληρονόμους εἰς Πίσσαν, κατὰ τὴν δύναμιν τῆς ὑποστάσεως τὴν διόρθωσιν…" (if they have heirs in Pisa according to the capacity of the estate…), the text could very well have been that these heirs must pay damages and therefore, the verb of the "διόρθωσιν" could possibly have been "ποιήσουσιν" (so the subject here is the heirs). The text could have continued: "if there are no heirs" after which follow the words from the existing text: "ποιήσωμεν δικαίως ἢ μετὰ συμβιβάσεως, πλὴν..." meaning that, in that case, the Pisans, namely the Pisan community, will

[476] The translation that I suggest is based on the Latin text because at this point the Latin text makes more sense. However, the Latin phrase "excepto tanto..." is problematic for the translation, which is why I have reverted to the corresponding Greek phrase "πλὴν ὅσον καταλειφθῇ …".

repair the damage etc...[477] I believe that, to make sense, the word "διόρθωσιν" should be included before the "ποιήσωμεν", in order to show that the Pisan community will repair damage. This interpretation explains why the *lacuna* appears just after the word "διόρθωσιν". It is most plausible that the person who copied the draft made a "saut du même au même" (*homoioteleuton*) mistake at that point because of the word "διόρθωσιν". As I have mentioned earlier, this chysobull is preserved by virtue of having been inserted into another, later, chrysobull. One explanation could be, therefore, that a corrupted version of the chrysobull of 1111 was inserted into the later chrysobull (presumably because mistakes were made in its transcription). Thus, at some points the Latin text makes more sense than the Greek .[478]

To sum up, based on the textual evidence we can surmise that: if the Pisans who have caused damage return to Pisa, they will pay for the damage themselves. If they have died and have heirs, the heirs will repair the damage and, if they do not have heirs, the Pisan community will pay for the damage. Another argument that there is something missing here is that the word "μὲν" is included in the phrase "εἰ μὲν ἔχουσι κληρονόμους εἰς Πίσσαν", but there is no "δὲ" that follows, which one would expect for it to be grammatically correct. The word "συμβίβασις" also raises questions here. In Byzantine texts, the word "διάλυσις" is used to describe an out-of-court agreement, a settlement; this moreso than the term "συμβίβασις" which rarely appears, but could also be used.[479] The term "συμβίβασις" is usually used in Byzantine texts to describe the existence of an agreement, and that the parties are in accord. In other words,

---

[477] Lilie suggests that the translation of this passage indicates that if the Pisans (who have caused the damage) do not return to Pisa, their heirs will be liable; otherwise, he adds, the provision about the heirs does not make sense, see Lilie, *Handel und Politik*, p. 70, footnote 3: "Aufgrund des Wortlauts könnte man eine Rückkehr der Gesuchten nach Pisa annehmen, doch ergäbe dann der Passus über die Erben, dit naturgemäß nur dann zur Wiedergutmachung herangezogen werden können, wenn der Hauptschuldner nicht greifbar ist, keinen Sinn (die griechische Fassung ist für die Klärung der Frage nicht hilfreich, sondern entspricht der lateinischen)". However, I do not agree with his interpretation because in the text it is stated "…καὶ ἐὰν εἰς Ῥωμανίαν οὐχ ὑπάρχωσι καὶ εἰς Πίσσαν ὑποστρέψωσι…" meaning that "…if they are not in Romania and they return to Pisa…"; moreover, Lilie does not explain the phrase "...τὴν διόρθωσιν ποιήσωμεν δικαίως ἢ μετὰ συμβιβάσεως, πλὴν..." by which it is obvious that the Pisans will repair the damage. In other words, while I agree with Lilie that this sentence does not make sense, I have proposed a different interpretation.

[478] For example, in the Greek text the "ἀπ' αὐτῶν" in Müller, *Documenti*, p. 43, line 56, no XXXIV is in the wrong place; it looks as if it belongs to "ζητηθῶσι", but this is not possible because the translation then would have been "..and if they are asked by your emperor of themselves." The Latin translation here, on the contrary makes more sense because the "de eis" in Müller, *Documenti*, p. 52, line 51, no XXXIV is in the correct position: it is clear that it belongs to "emendabunt" and not to "quesiti fuerint."

[479] B. 11,2,55 = C. 2,4,38 (BT 672/15): "διάλυσις δὲ (ἔστιν) ἀμφιβαλλομένου χρέους συμβιβασμός" and BS 448/5-6 (sch. P 2 ad B. 11,2,60 = C. 2,4,42): "διάλυσις γὰρ ἀμφιβαλλομένης δίκης συμβιβασμός ἐστι". See Papagianni, *Nomologia*, p. 133 and Papadatou, *Sumvivastiki Epilusi*, p. 29.

the term "συμβίβασις" is not always connected to an out-of-court settlement, but rather to a general agreement, an accord; this means that it does not necessarily derive from a legal dispute but it establishes, for example, an act of sale, or an act of exchange etc...[480] In *Peira* (11th century) we come across the word "συμβίβασις".[481] The commentator of the *Ecloga Basilicorum* (12th century) clarifies that the plaintiff has to notify the defendant of the claim before the trial begins, so that he knows what the plaintiff asks and can therefore decide whether he will reach an agreement with the plaintiff out-of-court, or whether he ought to prepare himself for court.[482]

In the chrysobull of Alexios I Komnenos, which is examined here, the word "συμβίβασις" refers to an out-of-court agreement, because it is mentioned in contrast to the adverb "δικαίως". It is provided that the damage will be repaired by the Pisans δικαίως ἢ μετὰ συμβιβάσεως, either in court or out-of-court, according to the interpretation that I propose. In the abstract of the chrysobull quoted in the beginning, the adverbs "δικαίως" and "συμβιβαστικῶς" are connected by the word "καὶ" (δικαίως καὶ συμβιβαστικῶς), whereas some lines below, the words "δικαίως" and "συμβίβασις" are connected with the word "ἢ" (δικαίως ἢ μετὰ συμβιβάσεως). However, this does not weaken the argument supporting the possibility of an out-of-court agreement. In the Latin translation of this chrysobull, the Greek word "συμβίβασις" is translated as "concordia" and the adverb "συμβιβαστικῶς" is translated as *concorditer*. One would expect that the Latin *concordia* would have been the translation of the Greek word "ὁμόνοια". It could be that the translator made a mistake and chose the wrong word in translating the word "συμβίβασις", something that is not unlikely since we have seen that mistakes were made in the Latin translations of Greek documents. As I have already mentioned, it seems that the translators worked with lists of words that they used for their translations and they could, for example, have chosen a wrong word to express the Greek term.[483] Such mistakes could easily have occured especially when technical legal terms were included. However, it is difficult to determine what the correct Latin word could have been, since the word *transactio* corresponds traditionally to the Greek "διάλυσις" and not "συμβίβασις". The word "ὑπόστασις" used in our text has many meanings in Byzantine legal texts, for example, it could mean

---

[480] Papadatou, *Sumvivastiki Epilusi*, pp. 36-37 who refers to an example from the *Prefect's Book*: 1,125.

[481] "….καὶ τὴν τοιαύτην διάλυσιν ἐδέξατο ὁ μάγιστρος· καὶ οὕτως ἐδέχθη τὰ τῆς συμβιβάσεως ἔγγραφα, οἷα καὶ ψήφου δικαστικῆς ὄντα μείζονα" [Translation:...the judge accepted the conciliation and the documents of the settlement have been accepted, which are more important than the judge's decision], here in the sense that a settlement comes before a decision; in *Peira*: 7,15 (περὶ διαλύσεως).

[482] "…ὅτι ὁ ἐνάγων ὀφείλει προεκδοῦναι ἤγουν πρὸ τοῦ καιροῦ τῆς δίκης δοῦναι τῷ ἐναγομένῳ εἴδησιν τῆς ἀγωγῆς, ἵνα γνοὺς ὁ ἐναγόμενος, τί ζητεῖ ἀπ' αὐτοῦ ὁ ἐνάγων, ἢ συμβιβασθῇ μετ' αὐτοῦ ἢ ἐμπαράσκευος ἔλθῃ εἰς τὸ δικαστήριον…" in *Ecloga Basilicorum*, p. 333, lines 17-19 (comment on B. 7.18.1.pr. -1 = D. 2.13.1.pr-1).

[483] See chapter I,3.

"subject", "theme", "undertaking", "purpose", "plan", "state of things", "substance", "property" etc.[484] In this chrysobull, however, it is used to describe the estate.

In this part of the chrysobull, it is also mentioned that the Pisans will repair the damage, in court or by way of compromise (according to the interpretation that I propose), but only up to the amount consented to by the Byzantine envoy or envoys [πλὴν ὅσον καταληφθῇ ἐκ συναινέσεως καὶ λόγου τοῦ ἀποκρισαρίου ἢ ἀποκρισαρίων ὑμῶν]. In this part, the text is also problematic. This "consensus" is connected with the "συμβίβασις", meaning that the Pisans will repair the damage according to the agreement that they have made with the Byzantine envoy. I have therefore translated the last phrase as "...only to the amount that remains on the basis of the consent of the Byzantine envoy". In the Greek text, the word "ἀποκρισάριος" is used and in the Latin translation, the word *nuntius*. Presumably then in such cases Byzantine envoys were sent to Pisa to give their consent. In the abstract of the chrysobull quoted above, the provision follows the conditional phrase, "if someone of the Pisans causes damage to the Byzantine empire" (ἐάν τινες ἐκ τῶν ἐποίκων τῆς χώρας καὶ τῶν ἀνθρώπων ἡμῶν ζημίαν ποιήσωσι τῇ βασιλείᾳ ὑμῶν). It is questionable whether the above phrase includes Pisans who cause damage to citizens of the Byzantine state or is restricted to the damage against the state itself. In any case it is clear that a form of legal co-operation between Byzantium and Pisa has been established.

[484] Sophocles, *Greek Lexicon*, p. 1125.

1.2.1.2 Obligations of Byzantium

With regard to maritime issues, the emperor clarifies what will happen if a Pisan ship is ravaged within the empire and property of this ship is looted by Byzantine subjects:

Εἰ κουρσευθῇ πλοῖον ὑμῶν ἐν τῇ χώρᾳ τῆς βασιλείας μου καὶ ἀπολεσθῶσι τὰ πράγματα ὑμῶν ἀφαιρεθέντα παρά τινων τῶν ὑπὸ τὴν βασιλείαν μου ὄντων, ἵνα ποιῇ ὑμῖν ἡ βασιλεία μου δίκαιον καὶ διόρθωσιν εἰς ἐνδεχόμενον καιρὸν μετὰ τὸ ἐλεγχθῆναι.[485]	Si depredata fuerit navis vestra in terra imperii nostri, et perditae fuerint res vestrae, ablatae ab aliquibus qui sub potentia imperii nostri sunt, faciet vobis clementia imperii nostri iusticiam et emenda-tionem convenienti tempore, postquam probatum fuerit.[486]	If your [i.e. a Pisan] ship is plundered within my empire and things of yours [of the Pisans] are lost because they have been removed by people who are subject to my Majesty, my Majesty will do what is right and make amends at the moment this is possible after proof has been given.[487]

While I have translated the "ποιῇ δίκαιον καὶ διόρθωσιν" as "do what is right and made amends", the word "διόρθωσις", translated into Latin as "emendatio", raises some questions. It could mean either of two things: that court proceedings will take place or that the empire will pay the Pisans the value of the goods, provided it is proved that a Pisan ship was ravaged within the empire and goods were removed from it by Byzantines. The suggestion that the empire would have paid the Pisans the value of the goods in this case seems rather exaggerated. Presumably the expression "ποιῶ δίκαιον καὶ διόρθωσιν" is in some way connected to a juridical procedure, but I will return to the expression "ποιῶ διόρθωσιν" further on in this section where it appears again.

In the following part of the chrysobull, shipwreck and salvage provisions are included. Here is the corresponding abstract:[488]

Πλοῖον ὑμῶν εἰ ναυαγήσει ἐν τῇ ἐπικρατείᾳ τῆς βασιλείας μου, τὰ πράγματα ὑμῶν, ἃ ὑμεῖς ἐλευθεροῦτε καὶ ἐκβάλλετε σεσωσμένα, ἵνα ἔχητε ἀμερίμνως καὶ ἃ δὲ	Navis vestra, si fracta fuerit infra potentiam imperii nostri, res vestras quas vos liberatis et extrahitis salvas habebitis sine dubio et illas autem quas Romei extrahent	If a ship of yours [of the Pisans] is shipwrecked within my empire, you can without any doubt keep the things that you yourselves have been able to safely recover from the ship; as for the

[485] Müller, *Documenti*, p. 44, lines 32-36, no XXXIV.
[486] Müller, *Documenti*, p. 53, lines 25-30, no XXXIV.
[487] From this point on, all other translations of Greek excerpts that I provide are based on the Greek texts.
[488] On this matter, see Laiou, *Byzantine Trade*, pp. 180-187 in which she refers to salvage provisions in Byzantine law.

ἐκβάλλουσιν οἱ Ῥωμαῖοι βοηθήσαντες, ἵνα ἔχητε κἀκεῖνα παρασχόντες κατὰ τὸν τύπον τοῦ τόπου πρὸς αὐτοὺς τὸν μισθὸν, εἰ μὴ ἴσως ἑκουσίως μέσον ὑμῶν κἀκείνων ἕτερόν τι συμφωνηθῇ.[489]	adiuvantes habebitis dantes eis mercedem secundum loci consuetudinem, nisi forte inter vos et eos aliquid aliud sponte pactum fuerit.[490]	things however, that the Byzantines will help to take out, you can keep these things also, provided that you give to them [the Byzantines] a reward as the regional custom requires, except if something else is willingly agreed between you and them.

In order to interpretate these shipwreck provisions, a comparison between such provisions and Byzantine martitime law is necessary. Such a comparison, including an interpretation of the above abstract is made in chapter V, where maritime law issues that we have come across in the Byzantine imperial acts towards the Venice, Pisa and Genoa, are examined.[491]

Most interesting for understanding the legal position of the Pisans within the Byzantine Empire is the following passage of this chrysobull:

Εἴπερ ἀπό τινος τῶν Βενετικῶν ἢ ἀφ' ἑτέρου ὑποκειμένου τῇ βασιλείᾳ ἡμῶν ἀνθρώπου πάθῃ τις Πισσαῖος ἀτιμίαν δεινὴν ἢ ὕβριν ἄσχημον ἢ τῶν πραγμάτων αὐτοῦ ζημίαν, ἵνα ποιῆται διόρθωσιν ἡ βασιλεία ἡμῶν μετὰ τὸ ἐλεγχθῆναι, εἰ ὑπομνησθῇ ἡ βασιλεία ἡμῶν, κατὰ τὸν νενομισμένον καὶ ἐνδεχόμενον καιρὸν.[492]	Si ab aliquo Veneticorum aut ab aliquo homine subia-cente imperio nostro passus fuerit Pisanus quispiam atrox dedecus vel turpem iniuriam aut de rebus suis damnum, faciet imperium nostrum emendationem, post-quam probatum fuerit, si nostre serenitati relatum fuerit infra tempus legale et conveniens, in omni continentia sua.[493]	If a Pisan suffers great dishonour or severe insult or his things are damaged by a Venetian or by any other subject of our Majesty, our Majesty will correct this, after proof has been made, if it is brought to the notice of my Majesty within the legal and convenient time.

The emperor here reassures the Pisans that if a Pisan is insulted or suffers injustice, or his things are damaged by a Byzantine subject, the empire will assume the responsibility for repairing the damage caused. The expression "ἵνα ποιῆται διόρθωσιν ἡ βασιλεία" was also used earlier by the emperor in the context of the recovery of lost goods from a ravaged ship. Rather than indicate

[489] Müller, *Documenti*, p. 44, lines 37-43, no XXXIV.
[490] Müller, *Documenti*, p. 53, 31-37, no XXXIV.
[491] See chapter V, 4.
[492] Müller, *Documenti*, p. 44, lines 73-79, no XXXIV.
[493] Müller, *Documenti*, p. 53, lines 65-72, no XXXIV; in the end of this Latin passage we read: "in omni continentia sua" something that is not included in the Greek text.

simply a payment on behalf of the emperor to the Pisans covering the value of the goods, this expression is connected to a legal procedure. In this passage, the expression "ἵνα ποιῆται διόρθωσιν ἡ βασιλεία" refers to the repair for damages sustained not only by the removal of goods, but also by an insult or dishonour directed to the Pisans. The exact role of the Byzantine side is not entirely clear.

In any case, three conditions have to be met for the Byzantine side to act. First of all, there must be dishonour or insult inflicted upon a Pisan or damage to his goods by a Venetian or a Byzantine subject. The second condition is that this situation has to be proved and thirdly, the empire has to be informed about this within a prescribed period of time. The latter condition implies a deadline; yet no exact time-frame or limit is provided.

What is striking here is that the Venetians in particular are mentioned. Given the competition between the Italian cities, this provision is very favourable towards the Pisans, since the latter are protected by an imperial order against malicious acts of the Venetians within the empire. It is interesting here that the emperor considers the Venetians subject to his empire and that he is actually involved in matters arising between Venetians and Pisans within his empire.[494] In other words, in this chrysobul the emperor regulates legal matters regarding relations between Venetians and Pisans that occur within the Byzantine territory.

The expression "κατὰ τὸν νενομισμένον καὶ ἐνδεχόμενον καιρὸν" means "within the legal and convenient time", and is an expression that we come across in Byzantine legal sources.[495] Sometimes this "legal time" is specified in the sources;[496] however, in our act there is no reference to a specific time frame in which the Pisans must inform the emperor about the damage they suffered.

---

[494] The emperor liked to believe that the Venetians were his subjects, however in reality this was not the case.

[495] See for example, *Ecloga Basilicorum*, p. 144, lines 1-6 (comment on B. 2,3,153 = D. 50,17,153): "ἐὰν δίδωσί μοί τις πρᾶγμα τυχὸν κατὰ δωρεὰν, ἐγὼ δὲ λαμβάνων σωματικῶς αὐτὸ ἐξ αὐτοῦ ὑπολαμβάνω εἰς παραθήκην δίδοσθαί μοι αὐτό, οὐ δυνήσομαι διὰ τοῦ νενομισμένου καιροῦ δεσπόσαι αὐτοῦ· ὅτε γὰρ ἐλάμβανον τοῦτο σωματικῶς, οὐκ εἶχον ψυχὴν ὥσε τὴν τούτου νομὴν ἰδίῳ ὀνόματι κτήσασθαι ἀλλὰ τὸ μὲν πρᾶγμα ἐκ τοῦ διδόντος μοι παρελάμβανον, ἡ δὲ ψυχή μου ἐκεῖνον εἶναι δεσπότην τοῦ παραδιδομένου ἐνόμιζεν, φύλακα δὲ τούτου μόνον ἐμέ." [Translation: if someone gives me something as a donation and I physically accept it with the understanding that he gave it to me as a deposit, I can not become the owner after the legal time; because when I physically received it, I did not intend to possess the thing in my name, but rather that I received the thing from the person who gave it to me and I believed that he was the owner of the given thing, and that I was just a keeper]. For this term see also B. 9,1,111 = C. 7,62,18 (BT 454/20); B. 23,1,70 = C. 4,30,8 (BT 1110/11); B. 6,3,17 = Nov. 8 c. 10 (BT 175/26).

[496] For example, in B. 40,1,20 = C. 6,9,4 (1787/20-22) we read: "ἐὰν αὐτεξουσία θυγάτηρ μὴ αἰτήσῃ τὴν διακατοχὴν τὴν ἐκ τοῦ δικαίου τῶν παίδων ἐντὸς τοῦ νενομισμένου χρόνου, τουτέστιν ἐντὸς ἐνιαυτοῦ, ὁ κληρονόμος οὐ δύναται τὴν κληρονομίαν ἐκδικῆσαι." [Translation: if a daughter who has her own power does not apply for the holding in possession which derives from the right of the children within the legal time, namely within one year, the heir can not claim the inheritance].

In the following text, the emperor reassures the Pisans that they could return safely to Pisa with their ships:

Ἐν πάσῃ τῇ ἐπικρατείᾳ αὐτῆς τὰ πλοῖα ὑμῶν καὶ οἱ ἄνθρωποι ὑμῶν βουλομένοι ὑποστρέψαι εἰς Πίσσαν οὐ κωλύωνται. Οὔτε ἡ βασιλεία μου, οὔτε ὁ περιπόθητος υἱὸς αὐτῆς καὶ βασιλεὺς ὁ Πορφυρογέννητος, οὔτε τις προστάξει ἡμῶν κατὰ τινα τρόπον ἀδικίας ἐν τοῖς πράγμασιν ὑμῶν ἢ τοῖς ἀνθρώποις ποιήσει. εἰ δὲ διά τινας αἰτίας γένηται, δι' ἐνδεχομένου καιροῦ ἵνα διορθῶται.[497]	Naves vestrae et homines vestri volentes redire Pisas non prohibebuntur. Neque imperium nostrum, neque desideratissimus filius eius, imperator porphyrogenitus, neque aliquis precepto nostri per quempiam modum iniusticiae faciet quicquam in rebus vestris vel hominibus; si vero ob aliquas causas interdum factum fuerit, per conveniens tempus emendabitur.[498]	Within the whole territory [of my empire your ships and people wanting to return to Pisa will not be prevented. Nor will my Majesty, nor her son and emperor the *porphyrogennetos* nor anyone else on our order do anything that will, in any way, be unjust for your property or people. If, however such injustice is done for any reasons, it will be repaired as soon as possible.

According to this passage, no one has the right to prevent the Pisans from returning to their city with their ships. It is ordered that no one, not even the emperor's son himself, has the right to do something unjust to the Pisans or to their property. If such an action were to happen, however, the emperor orders that repair will be made as soon as possible. It is added that:

...Ἐάν τις ὑμῶν ἔγκλησιν ποιήσῃ, ἐν γνώσει γενομένης τῆς βασιλείας μου, οὐκ ἀποπεμφθήσεται, ἀλλὰ προσδεχθήσεται ἡ ἔγκλησις αὐτοῦ καὶ κατὰ τὸν νόμον κριθήσεται καὶ ἐκδικηθήσεται μετὰ τὴν ἔλεγξιν τῆς ἀληθείας, εἰ φανῇ ἀδικούμενος.[499]	...Si aliquis vestrum reclamationem fecerit, non repelletur, si notum imperio nostro factum fuerit, sed recipietur reclamatio eius et secundum legem iudicabitur, et vindicabitur post probationem veritatis, si apparuerit iniusticiam passus.[500]	...if any of you raises a legal claim and this comes to the knowledge of my Majesty, it will not be refused but the legal claim of him will be accepted and will be judged and legal remedy will be awarded according to the law after proof of the truth if he turns out to have suffered injustice.

From this passage, it seems that Pisans have the right to bring legal claims before Byzantine courts. Especially significant is the expression "καὶ κατὰ τὸν νόμον κριθήσεται"; that their claim will be judged according to law

[497] Müller, *Documenti*, p. 44, lines 80-88, no XXXIV.
[498] Müller, *Documenti*, p. 53, lines 73-81, no XXXIV.
[499] Müller, *Documenti*, p. 44, lines 89-93, no XXXIV.
[500] Müller, *Documenti*, p. 53, lines 82-86, no XXXIV.

which presumably means that Pisans will be subject to Byzantine law and procedure.

In Byzantine law, the word "ἔγκλησις" means "claim", "objection", whereas the words "ἔκκλητος" and "ἔγκλητος" were used for the appeal.[501] The commentator of the *Ecloga Basilicorum* explains that an appeal is the objection to a decision of a judge, which is either wrong or has been made because of inexperience.[502] The words "ἔγκλησις" and "ἔγκλητος" are rather similar which causes confusion as to what the emperor means here: claim, or appeal. The emperor uses the word "ἔγκλησις" to refer to a legal claim. In the Latin translation, the word "reclamatio" is used which could mean "appeal" or "objection" or "claim" or "revindication", but here it is used in the sense of "claim".[503]

When referring to trade privileges of the Pisans, the emperor mentions that the Pisans have the right to sell and deliver products from Byzantium as if they were Byzantines. He clearly states that he will send letters to the Byzantine officials in those places travelled to by the Pisans, reminding them that the Pisans are loyal to the emperor and informing them about the agreements between the two sides, so that no duke or other official serving the emperor will infringe upon those agreements.

The emperor adds that, if, nevertheless, something unjust were to happen, the officials serving under the emperor would be punished and justice would be done as if the Pisans had addressed the emperor. Finally, these provisions were to apply for Pisans in all places and islands to which they reach; here is the corresponding text:

...τὰς δὲ ἄλλας πραγματείας τὰς οὔσας ἐκ τῆς Ῥωμανίας ἵνα πωλῆτε ὡς οἱ Ῥωμαῖοι, καὶ διδόατε ὡς οἱ Ῥωμαῖοι, γραμμάτων πεμφθησομένων παρὰ τῆς βασιλείας ἡμῶν εἰς τὰς χώρας αὐτῆς, ἐν αἷς μέλλετε καταίρειν,	Alias autem merces quae de Romania sunt vendetis sicut Romei et dabitis sicut Romei. Litterae imperii nostri mittentur ad terras eius in quibus applicabitis, ut duces in eis existentes cognoscant, quam imperio nostro debetis fidem	…the other products however, the ones that come from Romania [from Byzantium], you can sell and give them like the Romans [the Byzantines] and letters will be sent by my Majesty to its lands in which you will pass

[501] Zachariä, *Geschichte*, p. 398. In the *Eisagoge* it is mentioned: "ἔκκλητός ἐστιν ἔγκλησίς τινος τῶν κριθέντων κατά τινος κρίνοντος ὡς μὴ καλῶς κριθέντος. καὶ πᾶσα μὲν ἔκκλητος καὶ ἔγκλησις· οὐ πᾶσα δὲ ἔγκλησις καὶ ἔκκλητος. διαιρεῖται γὰρ τὸ τῆς ἐγκλήσεως ὄνομα εἴς τε τὴν λεγομένην ἔκκλητον καὶ εἰς τὴν ἀρχὴν ἔχουσαν ἔγκλησιν", *Eis.* 11,4 [Translation: appeal is the objection of one of the judged parties against the one who judged for not having been judged well; and every appeal is also an objection; but not every objection is an appeal; because the name of "ἔγκλησις" is divided into the so-called appeal and in the "initial claim"], see Zepos, *JGR*, vol. II, p. 260.

[502] "Ἔκκλητος δέ ἐστιν αἰτίασις καὶ μέμψις ἀποφάσεως καὶ ἔχει χώραν, ὅταν ἡ ἀπόφασις τοῦ δικαστοῦ ἢ ἀδικός ἐστιν ἢ κατὰ ἀπειρίαν ἐξενεχθεῖσα" in *Ecloga Basilicorum*, p. 352, lines 8-9 (comment on B. 9,1,1pr. = D. 49,1,1pr).

[503] *Medieval Latin Dictionary*, vol. II, p. 1158.

ἵνα οἱ ἐκεῖσε πράκτορες γνωρίσωσι τὴν πρὸς τὴν βασιλείαν μου καθαρὰν πίστιν ὑμῶν καὶ δούλωσιν καὶ τὰ τυπωθέντα παρὰ τῆς βασιλείας μου πρὸς ὑμᾶς καὶ τὰ παρ' ὑμῶν πρὸς αὐτὴν, ὡς ἄν μὴ παρεξέρχωνται τὰ συμφωνηθέντα παρὰ τῆς βασιλείας μου οἵ τε δοῦκες καὶ οἱ λοιποὶ οἱ ὑπὸ τὴν ἐξουσίαν τῆς βασιλείας μου, ἀλλὰ καὶ εἰ συμβῇ γενέσθαι τι ἄδικον, ἵνα ἐκδικῆται παρ' αὐτῶν καὶ γίνηται ἡ διόρθωσις δικαία ὡς ἄν καὶ παρὰ τῆς βασιλείας μου. Εἰς πάσας τὰς χώρας αὐτῆς καὶ τὰς νήσους, ἐν αἷς ἀπληκεύητε, οἱ αὐτοὶ τόποι φυλάττωνται ὑμῖν καὶ ἡ αὐτὴ γίνηται διόρθωσις...[504]

puram et servitutem vestram et quae ab imperio nostro vobis constituta sunt et quae imperio nostro a vobis, quatenus non trasgrediantur quae ab imperio nostro pacta sunt duces et reliqui qui sub potestate imperii nostri sunt. Et si acciderit aliquid iniustum fieri, vindicabitur ab iis fietque emendatio iusta, ut et ab imperio nostro. In omnibus terris potentiae nostrae et insulis in quibus applicatis iidem vobis locis serventur et eadem emendatio fiat.[505]

through so that the officials will know your true loyalty and service to my Majesty and [so that they will know] what has been agreed by my Majesty to you and [what has been agreed] by you to my Majesty, so that the dukes and the rest who are under my imperial power will not overceed the agreed by my Majesty, and if, however, something unjust will occure, [the damage] will be claimed by them [the *praktores*] and there will be a fair restitution, just as if the emperor himself put things right [just as if they had addressed the emperor himself]. To all the lands of my Majesty and the islands, to which you will sail, these provisions will be preserved for you and the restitution will take place…

Near the end of the document, the emperor confirms that this agreement will remain inviolable under the condition that the Pisans will observe these provisions firmly in favour of the emperor, his son and the whole empire.[506] The chrysobull is therefore granted as a mutual act because the written agreement was confirmed by oath by the Pisans and was ratified by signatures. The chrysobull was then sent to Pisa.[507]

---

[504] Müller, *Documenti*, p. 44, lines 55-72, no XXXIV.

[505] Müller, *Documenti*, p. 53, lines 49-64, no XXXIV.

[506] "Ταῦτα οὖν πάντα ἵνα μένωσιν ἀμετάτρεπτα μέχρι παντὸς, ἕως ἂν ὑμεῖς τε καὶ πάντες οἱ ἔποικοι τῆς χώρας ὑμῶν καὶ τοῦ κάστρου φυλάττητε τὰ ἀνωτέρω δηλωθέντα βέβαια καὶ ἀπαράθραυστα πρός τε τὴν βασιλείαν μου καὶ τὸν περιπόθητον υἱὸν αὐτῆς καὶ βασιλέα, κῦριν Ἰωάννην τὸν πορφυρογέννητον, καὶ τὴν Ῥωμανίαν..." in Müller, *Documenti*, p. 44, line 105 - p. 45, line 5 and the Latin translation on p. 53, lines 98-103, no XXXIV: "Hec itaque manebunt quippe immutabilia semper, quousque vos et omnes habitatores terrae vestrae et civitatis observatis ea quae superius notificata sunt, firma et incorrupta imperio nostro et desideratissimo filio eius et imperatori, domino Iohanni porphyrogenito, et Romanie...".

[507] "...καὶ ὁ παρὼν χρυσόβουλλος λόγος ἀμοιβαῖος ὢν τῆς ἐγγράφου συμφωνίας ὑμῶν τῆς διὰ τοῦ ὑμετέρου ὅρκου βεβαιωθείσης καὶ ταῖς οἰκείαις ὑπογραφαῖς ὑμῶν πιστωθείσης ἀπεστάλη δι'

ὑμῶν πρὸς πάντας τοὺς ἐποίκους τοῦ κάστρου καὶ τῆς χώρας τῆς Πίσσης.." in Müller, *Documenti*, p. 45, lines 7-12 and the Latin translation on p. 54, lines 1-5, no XXXIV: "…et presens chrysobulum verbum, mutuum vestrae scriptae conventioni per vestrum sacramentum confirmatae et vestris propriis subscriptionibus corroboratae, missum est per vos omnibus habitatoribus civitatis et terrae Pisarum". For more on how this chrysobull and such treaties were made, see also chapter V, 5.

2. The chrysobull of Manuel I in 1170 (Reg. 1499[1400])

2.1 Introduction

This privilege act is a chrysobull *sigilion* issued in 1170 and is inserted in the chrysobull of Isaac II Angelos which is preserved in Greek with a Latin translation.[508] The emperor refers to the privilege act of his grandfather, Alexios I Komnenos to the Pisans by which, among other provisions, an area in Constantinople was granted to them. The emperor mentions that he intended to make a change in this grant and give the Pisans another area, situated on the opposite side of Constantinople. However, the Pisans asked him not to proceed in this change and to allow them to keep the original area that was previously granted to them. The emperor stresses that because the Pisans have made an oath confirming their last agreement with the empire and have sent envoys before him who have taken an oath in person, he confirms by this chrysobull the previous grant of Alexios I Komnenos. While this act is of little interest for legal historians, the information it contains about the oaths of the envoys in combination with relevant information in other acts could help us understand the procedures followed in constructing these treaties.

[508] For information on this chrysobull and the edition that I have used, see the examination of Reg. 1255 in chapter III,1. See also Dölger*, Regesten*, p. 259 and p. 307.

2.2 Legal issues

2.2.1 Oaths of the envoys

In this text, it is mentioned that Pisa has sent three envoys: the consul of the city, Albertus, the judge Burgundio and the count Marco. In the chrysobull, two oaths are inserted: the first is made by the consul alone and the second by the other two envoys. The consul makes the oath on behalf of the archbishop of the Pisans, of the consuls, of the senators and of all the city of Pisa. He promises that the Pisans will observe the agreements and the oaths that had been made to Alexios I Komnenos and henceforth to Manuel I Komnenos. He adds that this oath was renewed by the consuls and the rest of the people of Pisa, as was usual[509] and he promises this without malicious intent on the Gospel and on the Holy cross.[510] The other two envoys also swear on the Gospel and the Holy cross before the emperor that they will observe the agreement made with the Pisans by Alexios I Komnenos and henceforth by Manuel I Komnenos, which is promised by the consul and that they will ensure that it will be respected by all Pisans. It is clear from both oaths that the consul is the one who promises on behalf of the Pisans, the archbishop and the authorities of Pisa; he promises that the city of Pisa will observe the agreement with the emperor. The role of the other two envoys appears more secondary, since they promise to observe what the consul had promised and to make sure that the agreement will be confirmed by the Pisans.[511]

What is also worth mentioning is the fact that the judge, Burgundio, was one of the Pisan envoys. Burgundio of Pisa (ca. 1110-1193) was a learned man who was known for translating important texts from Greek into Latin. With regard to the legal field, his translations of the Greek parts of the *Digest* into Latin were well-known.[512] We have information that during the period 1168-71, he participated in negotiations that took place in Constantinople.[513] Given that Burgundio took part in negotiations and that he is mentioned in this chrysobull, the question arises as to whether Burgundio could have been involved in the translation of this chrysobull from Greek into Latin. Based on the translation of the official title of the Byzantine emperor, Classen believes that Burgundio was indeed involved somehow in the translation of the act. In particular, Classen points out that in the oath of the consul in the Latin text, it

[509] "…κατὰ τὴν συνήθειαν" in Müller, *Documenti*, p. 45, lines 70-71, no XXXIV.

[510] "…καὶ ὡς ὀμνύω ταῦτα χωρὶς δόλου καὶ περινοίας,….τὰ ἅγια ταῦτα τοῦ θεοῦ εὐαγγέλια καὶ ὁ τίμιος καὶ ζωοποιὸς σταυρός." in Müller, *Documenti*, p. 45, lines 71-74 and the Latin translation on p. 54, lines 62-65, no XXXIV: "Et sicut hec iuro sine fraude et malo ingenio,….sancta hec Dei evangelia et honorabilis et vivifica crux."

[511] See also Classen, *Burgundio*, pp. 25-26.

[512] Classen, *Burgundio*, pp. 39ff.

[513] See *Lexikon des Mittelalters*, vol. II, p. 1098.

is written "dominum nostrum imperatorem Romanorum et semper augustum dominum Manuelem Porphyrogenitum Comnanum,"[514] whereas in the Greek text we find "τὸν κύριον ἡμῶν τὸν βασιλέα Κωνσταντινουπόλεως καὶ πάσης Ῥωμανίας, τὸν πορφυρογέννητον κῦριν Μανουὴλ τὸν Κομνηνὸν….".[515] Classen suggests that the expression "βασιλέα Κωνσταντινουπόλεως" would never have been used in a Byzantine text and suspects that this could be a translation from a Latin text. After all, it seems most logical that the Pisan consul would have taken the oath in Latin and this was later translated into Greek. From the time of Charlemagne, the Westerners preferred to use the title "Imperator Constantinopolitanus" for the Byzantine emperor, rather than the title "Emperor of the Romans".[516] However, the officer who was responsible for the translation of the whole chrysobull into Latin did not translate the "βασιλέα Κωνσταντινουπόλεως" in the Latin text and therefore,[517] argues Classen, the oath of the consul in the Latin text is more consistent with Byzantine practice than the Greek text.[518] Classen suggests that this could be an indication that Burgundio was indeed involved in the translation of the Latin into Greek.[519] I agree with Classen that the title of the emperor in the Greek text as "βασιλέα Κωνσταντινουπόλεως" is rather suspicious even though the whole sentence in Greek speaks of "…τὸν βασιλέα Κωνσταντινουπόλεως καὶ πάσης Ῥωμανίας…".[520] Another argument in support of Classen can be found in the acts directed at Venice, in which the Venetians often entitled these treaties as privileges of the emperor of Constantinople.[521] Also the expressions for the emperor, "ἀεὶ αὔγουστος"[522] and "αιθριώτατος"[523], and their Latin translations, *semper augustus* and *serenissimus* respectively seem unusual for Byzantine texts. Indeed Burgundio must have played a role in the translation of this act. After all, given his knowledge of Greek and his experience in translating Greek texts, it is difficult to imagine that he had remained totally passive in the drafting of this act and its translation.

[514] Müller, *Documenti*, p. 54, lines 37-39, no XXXIV.
[515] Classen, *Burgundio*, p. 26. See Müller, *Documenti*, p. 45, lines 44-47, no XXXIV.
[516] Classen, *Burgundio*, p. 26.
[517] See the Latin text some lines above where "…imperatorem Romanorum…" is mentioned, in Müller, *Documenti*, p. 54, lines 37-39, no XXXIV.
[518] Classen, *Burgundio*, p. 26.
[519] Classen, *Burgundio*, p. 27.
[520] Müller, *Documenti*, p. 45, lines 44-47, no XXXIV.
[521] See for example, Reg. 1576 and Reg. 1577 which are entitled "Privilegium Ysaakii constantinopolitani imperatoris" and "Privilegium confirmationis de concessione imperatoris constantinopolitani" respectively by the Venetians. See also the examination of these two chrysobulls in chapter II,5.1.
[522] Müller, *Documenti*, p. 41, line 4, and the Latin on p. 50, lines 50-51 no XXXIV.
[523] Müller, *Documenti*, p. 42, line 46, and the Latin on p. 51, line 37 no XXXIV.

2.2.2 Confirmation of the grants

When referring to the grants of Alexios I Komnenos and of John II Komnenos[524] to the Pisans at the beginning of the chrysobull, the emperor mentions that an act was made (πρακτικόν) for the granting of immovable property. This act corresponds to the practice that we have seen in the acts of Venice regarding the granting of immovable property.[525] After observance of the two oaths, the emperor grants this chrysobull and orders that the grant made by his grandfather to the Pisans will remain inviolable as long as the latter observe the agreements and the oaths towards the empire.

...καὶ διορίζεται βεβαία μένειν καὶ ἀπαρεγχείρητα τὰ γεγονότα τούτοις χρυσόβουλλα ἐπὶ τῇ δωρεᾷ τῶν τοιούτων ἀκινήτων, εἴπερ καὶ ἡ τοιαύτη χώρα τῆς Πίσσης καλῶς συντηρεῖ τὰς πρὸς τὴν βασιλείαν ἡμῶν καὶ τοὺς κληρονόμους καὶ διαδόχους αὐτῆς συνθήκας καὶ τοὺς ὅρκους αὐτῶν πρὸς τιμὴν καὶ ὠφέλειαν τῆς βασιλείας ἡμῶν καὶ τῆς Ῥωμανίας.[526]	...et iubet firma et inviolabilia permanere facta eis chrysobula super collatione huiuscemodi immobilium, si et huiusmodi terra Pisarum bene observat pacta et sacramenta sua quae imperio nostro, heredibus et successoribus eius fecit, ad honorem et proficuum imperii nostri et Romaniae.[527]	...and it is ordered that what is made in these chrysobulls will remain secure and firm regarding the donation of these immovables, if also the city of Pisa observes the agreements and the oaths towards our Majesty and its heirs and successors for the honour and benefit of our Majesty and of Romania.

Finally, it is ordered that the chrysobull has to be registered at the competent offices.

[524] For the privilege of John II Komnenos there are only indirect references, see Reg. 1310a [1312].

[525] "...Ἐφθασαν μὲν οἱ πιστότατοι τῇ βασιλείᾳ μου Πισσαῖοι κτήσασθαι ἐν τῇ Μεγαλοπόλει διὰ χρυσοβούλλου τοῦ ἀοιδίμου πάππου τῆς βασιλείας μου καὶ αὖθις τοῦ ἀοιδίμου αὐθέντου καὶ πατρὸς τῆς βασιλείας μου ἔμβολον καὶ σκάλαν καὶ ἐκκλησίαν, καθὼς ἐν τῷ γεγονότι αὐτοῖς πρακτικῷ δηλοῦται τὰ περὶ τούτου..." in Müller, *Documenti*, p. 45, lines 20-25 and the Latin translation in p. 54, lines 13-19, no XXXIV: "Fidelissimi imperio nostro Pisani adepti fidem fuerunt iam in magna Urbe per chrysobulum semper memorandi avi imperii nostri et rursum semper memorandi domini et patris celsitudinis nostrae embolum et scalam et ecclesiam, secundum quod in practico ipsis facto notificantur, quae huius sunt."

[526] Müller, *Documenti*, p. 45, lines 96-103, no XXXIV.

[527] Müller, *Documenti*, p. 54, lines 87-94, no XXXIV.

The Angelos dynasty

3. The chrysobull of Isaac II Angelos in 1192 (Reg. 1607)

3.1 Introduction

This chrysobull is lengthy as it includes two earlier chrysobulls from the Komnenian dynasty.[528] Based on the information provided by Dölger, this Greek text must be an original chrysobull and not a copy since it contains the elements of such an act, for example the red ink.[529] In the beginning of the chrysobull it is mentioned that Pisa had sent two envoys to the emperor to request compensation for damage that was caused to the Pisans during the reign of Andronikos.[530] However, the emperor reminded them that some Pisans had also caused damage to Romania. Therefore, after a request made by the envoys, amnesty was granted for former cases connected to the reign of Andronikos and for other cases between Pisans and Byzantines. The emperor then confirms the former grants made to the Pisans.[531] Following the confirmation of grants, an oath made by the Pisan envoys is inserted in which they promise that the Pisans will observe the provisions of the last chrysobulls and promise to be loyal to Romania. The emperor then ratifies the former chrysobulls of Alexios I Komnenos and of Manuel I Komnenos, which are both inserted. In terms of territorial grants, a description is also included of the old Pisan district in Constantinople with its new extensions. The legal issues in this chrysobull can be divided into three main categories referring to: i. the petition of the Pisan envoys requesting compensation for damage and payment of debts from the Byzantines to Pisa and the amnesty given, ii. information about the making of the treaty and the matter of corporal oaths and, finally, iii. the grants of immovable property.

[528] One by Alexios I (Reg. 1255) and one by Manuel I (Reg. 1499[1400]).
[529] See Dölger, *Regesten*, p. 307.
[530] See Lilie, *Handel und Politik*, p. 79.
[531] For the actual grants of the emperor in this chrysobull and the exact negotiations between the Pisans and the Byzantines, see Lilie, *Handel und Politik*, pp. 79-83 and Dölger, *Regesten*, pp. 306-308.

3.2 Legal issues

3.2.1 Petition of the Pisan envoys and the amnesty given

In this chrysobull, it is mentioned that the two Pisan envoys requested compensation for damage done to the Pisans and their community by Romania, and asked that "the good will of the emperor be directed to their state and land".[532] Information about the petition is also given in the oath of the two envoys further on in the act. There we read that the envoys were to ask the emperor for the repayment of loans issued at the time of Andronikos, as well as loans made by some wealthy Pisans to Isaac II Angelos that were used to pay the ransom for his brother Alexios, who was held hostage by the count of Tripoli.[533] It is clear that the envoys were sent on behalf of the *podestà* and the

[532] "...καὶ τοὺς συνετωτάτους συμπολίτας αὐτῶν, τὸν τε Ῥαϊνέρην Γαϊτάνον καὶ τὸν κριτὴν Σιγέριον, πρὸς τὴν βασιλείαν μου ἐξαπέστειλαν, τῶν τε προγεγονυιῶν τοῖς Πισ[σαίοις καὶ τῷ] κοινῷ αὐτῶν ζημιῶν ἀπὸ τοῦ μέρους τῆς Ῥωμανίας θεραπείαν ἐπιζητοῦντες καὶ [τὴν πρὸς] τὸ κάστρον [καὶ τὴν χώραν αὐτῶν] προλαβοῦσαν εὐμένειαν τῆς [τοῦ κ]ράτους ἡμῶν γαληνότητος λι[παρῶς ἀναζη]τούμενοι." in Müller, *Documenti*, p. 40, lines 21-28 and the Latin translation on p. 49, lines 22-29, no XXXIV: "...et prudentissimos concives suos Rainerium Gaetani et Sigerium iudicem nuncios ad nostram legaverunt serenitatem, dapmnorum Pisanis eorumque communi ex parte Romaniae preillatorum restaurationem petentes et benignitatem tranquillitatis imperii nostri pristinam quam erga civitatem et terram ipsorum nostra habebat clementia, supliciter postulantes."

[533] "….ἡμεῖς οἱ ἀποκρισάριοι τοῦ κάστρου καὶ τῆς χώρας τῆς Πίσσης, ὁ τε Ῥαϊνέρης Γαϊτάνος καὶ ὁ κριτὴς Σιγέριος, ἀποσταλέντες παρὰ Τεδιτζίου τοῦ ἐξουσιαστοῦ τοῦ κάστρου καὶ τῆς χώρας τῆς Πίσσης τοῦ υἱοῦ τοῦ κόμητος Οὐγουλίνου καὶ τῶν συμβούλων καὶ τῆς κοινότητος αὐτῆς πρὸς τὸν ὑψηλότατον βασιλέα Ῥωμαίων καὶ ἀεὶ αὔγουστον, κῦριν Ἰσαάκιον τὸν Ἄγγελον καὶ ἐνδεδομένον ἔχοντες παρ' αὐτῶν ζητῆσαι ἀπὸ τοῦ βασιλέως καὶ τῆς Ῥωμανίας τά τε προεκδανεισθέντα χρήματα παρά τινων Πισσαίων τῷ τῆς κακῆς μνήμης ἐκείνῳ Ἀνδρονίκῳ, ὁπηνίκα ἔτι τοῦ ἁγιωτάτου βασιλέως κυροῦ Μανουὴλ τῷ βίῳ περιόντος ὁ δηλωθεὶς κῦρις Ἀνδρόνικος τοῖς Ἱεροσολύμοις ἐπεχωρίαζεν, ἀλλὰ δὴ καὶ τὰ παρὰ τῶν ἑτέρων Πισσαίων, τοῦ τε Τεδίσκου, τοῦ Συμεὼν Τζιμικούζου καὶ τοῦ Γηράρδου τοῦ Δαντούνη καὶ τῶν λοιπῶν ἐκδανεισθέντα τῷ περιποθήτῳ αὐταδέλφῳ τοῦ κυρίου βασιλέως Ῥωμαίων καὶ ἀεὶ αὐγούστου κυροῦ Ἰσαακίου τοῦ Ἀγγέλου, τῷ πανευτυχεστάτῳ σεβαστοκράτορι κυρῷ Ἀλεξίῳ τῷ Ἀγγέλῳ, ὁπηνίκα παρὰ τοῦ κόμητος Τριπόλεως κατεχόμενος ἦν …." In Müller, *Documenti*, p. 41, lines 51-71 and the Latin translation on p. 50, lines 46-64, no XXXIV.: "Nos legati civitatis et terrae Pisanae, Rainerius Gaetani et Sigerius iudex, missi a Tedicio, comitis Ugolini filio, potestate civitatis et terrae Pisanae ac consiliariis ipsoque communi eius ad altissimum imperatorem Romanorum et semper augustum, dominum Ysakium Angelum, et iniunctum ab eis habentes petendi ab imperatore et Romania premutuatam pecuniam a quibusdam Pisanis Andronico illi malae memoriae, cum adhuc sanctissimo imperatore domino Manuele in vita existente, notificatus dominus Andronicus Ierosolimis degeret, nec non et a quibusdam aliis, videlicet Teodisco de Picicasegale, Simone Cimicosi et Gerardo Antonii et reliquis mutuatam desideratissimo fratri domini imperatoris Romanorum et semper augusti, domini Ysaakii Angeli, felicissimo sevastocratori domino Alexio Angelo, cum a comite Tripolis detentus esset." On the requests made by the Pisans, see also Lilie, *Handel und Politik*, pp. 79ff.

consuls of Pisa to Constantinople with a specific mandate to negotiate these conditions. The term used to describe the mandatum in the Greek text is "ἐνδεδομένον ἔχοντες", while in the Latin translation it is "iniunctum habentes."[534] After hearing their request, the emperor reminded them that some Pisans had also caused damage to the empire and thus, a compromise was agreed to between the two parties, Byzantium and Pisa. On the request of the Pisan envoys, the emperor agreed to grant amnesty for matters deriving from the reign of Andronikos under the condition that the Pisans themselves also grant amnesty for older cases that were still pending, regardless of whether they were based on a good cause.[535] The Pisans accepted this proposal. In other words, both parties agreed upon a mutual amnesty of their claims. Moreover, the Pisans have pledged their loyalty to Romania for the future. As a result, the emperor accepted a further request made by the envoys and restored the rights that had formerly been applied to the residents of the castle and the land of Pisa.[536] In their oath, the envoys also refer to their request to raise suits against the Byzantine officers who had acted unjustly against Pisans. They mention that this demand was not accepted by the emperor because the defendants were

[534] Müller, *Documenti*, p. 41, line 58 and p. 50, line 52, no XXXIV.

[535] "...καὶ ἡ βασιλεία μου εὐμενῶς [αὐτοὺς προσδεξαμένη] καὶ τῶν λεγομένων παρ' αὐτῶν ἀκροασαμένη, ἀνταναμνήσασα δὲ καὶ αὐτὴ τούτους τῶν ἐκ τοῦ μέρους τῆς Πίσσης ἐπιτριβεισῶν τισι τῆς Ῥωμανίας μέρεσι ζημιῶν καὶ ἀντιθεραπευθῆναι ταύτας παρ' αὐτῶν τῇ Ῥωμανίᾳ ἀνταπαιτήσασα, τέλος ἐκ παρακλήσεως τῶν δηλωθέντων ἀποκρισιαρίων ἀμνηστίαν μὲν αὐτὴ τούτοις τῶν ἐξότου ἡ τοῦ τυράννου ἐπέλευσις γέγονε κατένευσεν, ἀμνημονῆσαι δὲ καὶ αὐτοὺς τῶν ὅσας παλαιτέρας ὑποθέσεις μέχρι καὶ νῦν ἔκ τινων αἰτιῶν εὐλόγως ἢ καὶ ἀνευλόγως ὑποτεινομένας εἶχον ἀπήτησε..." in Müller, *Documenti*, p. 41, lines 1-12 and the Latin translation on p. 49, lines 29 - p. 50, line 4, no XXXIV: "...Et serenitas nostra benigne eos recipiens et quae ab iis dicebantur ascultans eisque versa vice damna partibus Romaniae quibusdam a parte Pisarum illata in memoriam revocans eaque ab ipsis Romaniae restaurari vicissim exigens; ad ultimum ex predictorum legatorum precibus abolicionem quidem eorum quae ex quo tirannus supervenit usque in presens acta sunt eis concessit; immemores autem et eos fore omnium negotiorum quae hactenus et usque nunc ex aliquibus causis iuste vel iniuste producenda habebant exegit."

[536] "...ἐπὶ πλέον τούτους ἀποδεξαμένη ἡ βασιλεία μου τῆς μετὰ πολλοῦ τοῦ δυσωπητικοῦ καὶ ὑποπεπτωκότος σχήματος πρὸς αὐτὴν αὐτῶν παρακλήσεως οὐ μόνον τοὺς ἐποίκους τοῦ κάστρου καὶ τῆς χώρας τῆς Πίσσης εἰς τὰ προαπονεμημένα αὐτοῖς ἐν τῇ Ῥωμανίᾳ δίκαια ἀποκαταστῆσαι ηὐδόκησεν, ἀλλὰ κατὰ τὴν τοῦ κυρίου ἀπόφασιν ἐπὶ ὀλίγα πιστοὺς εὑροῦσα ἐπὶ πλειόνων κατέστησε..." in Müller, *Documenti*, p. 41, lines 23-29 and the Latin translation on p. 50, lines 16-24, no XXXIV: "...Amplius quippe serenitas imperii nostri eos acceptans et suplicationem eorum cum multum suplicatoria et procidenti figura fusam ad nostram clementiam exaudiens, non solum habitatores civitatis et terrae Pisarum in ea iura quae ipsis in Romania precollata fuerant restitui concessit; verum etiam, secundum Domini sententiam, super pauca fideles repperiens, supra multa constituit...". In this abstract the emperor makes a reference to the New Testament: Matthew 25:21: "ἔφη αὐτῷ ὁ κύριος αὐτοῦ· εὖ δοῦλε ἀγαθὲ καὶ πιστέ. ἐπὶ ὀλίγα ἦς πιστός, ἐπὶ πολλῶν σε καταστήσω" ("his master replied: 'Well done, good and faithful servant! You have been faithful with a few things; I will put you in charge of many things" from *The Holy Bible, New International Version* 2011).

since deceased and the status of these cases had become unclear. The Pisans therefore decided to willingly abandon these cases, not least because of the compensation granted to all the residents of the community and land of Pisa, as mentioned earlier in the chrysobull.[537] The envoys clearly express that they have decided to accept the offer made by Isaac Angelos to their land and to forego their original request for compensation as stated in the chrysobull, because the emperor himself agreed not to request compensation for damages caused to the Romans by some Pisans. [538]

[537] "..ἐνδοῦναι δὲ ἡμῖν καὶ ἐνάγειν κατὰ νόμους κατά τινων περιόντων ἀνθρώπων τῆς ἁγίας αὐτοῦ βασιλείας καὶ δημοσιακὰς δουλείας ἐνεργησάντων καί τινας ἀδικησάντων Πισσαίους. διὰ τὸ ἐπιζητεῖν μὲν ἡμᾶς ἀπὸ τοῦ βασιλικοῦ βεστιαρίου τὰς προτριβείσας τισὶ Πισσαίοις ζημίας παρὰ τῶν ἀποιχομένων ἀνθρώπων τῆς ἁγίας αὐτοῦ βασιλείας, μὴ εἰσακουσθῆναι δὲ διὰ τὸ μὴ εὑρίσκεσθαι τοὺς ἐναγομένους, κἀντεῦθεν εἰς ἄδηλον τὰς ὑποθέσεις περιίστασθαι καὶ διὰ τοῦτο ἀποστῆναι τούτων ἑκόντας δίχα βίας τινὸς διὰ τὴν γενομένην, ὡς ἀνωτέρω δεδήλωται, ἀντισήκωσιν τοῖς ἐποίκοις πᾶσι τοῦ κάστρου καὶ τῆς χώρας τῆς Πίσσης..." in Müller, *Documenti*, p. 42, lines 33-45 and the Latin translation on p. 51, lines 24-36, no XXXIV: "...Licentiam vero dare nobis agendi secundum leges in quosdam superstites homines ipsius qui servicia tractaverunt fisci et quibusdam Pisani iniusticiam intulerant, eo quod petebamus quidem an imperiali thesauro dapmna illata quibusdam Pisanis a defunctis hominibus celsitudinis eius, non autem exauditi fuimus, quoniam rei nequaquam repperientur ideoque negotia non erant manifesta; et ob hanc rem destitimus ab iis sponte, sine illata nobis vi aliqua, ob restaurationem pro hiis, ut superius dictum est, factam universis habitatoribus civitatis et terrae Pisanae."

[538] "...ἠρέσθημεν τῇ τοιαύτῃ πρὸς τὴν χώραν ἡμῶν μεγαλοδώρῳ φιλοτιμίᾳ τοῦ αἰθριωτάτου καὶ ἀεὶ αὐγούστου βασιλέως, κυροῦ Ἰσαακίου τοῦ Ἀγγέλου καὶ ἀμνηστίαν καταψηφισάμενοι τῶν παρ' ἡμῶν ζητηθέντων πάντων, ὡς εἴρηται, καὶ ἀνωτέρω ἀναταχθέντων διὰ τὸ καὶ τὴν ἁγίαν αὐτοῦ βασιλείαν κατανεῦσαι πρὸς ἡμᾶς ἀμνημονῆσαι τῶν μέχρι καὶ νῦν γεγονυιῶν ζημιῶν πρὸς ἀνθρώπους τῆς Ῥωμανίας, ἰδοὺ διὰ τοῦ παρόντος ἡμῶν ἐγγράφου …. Συμφωνοῦμεν πρὸς τὴν βασιλείαν αὐτοῦ.." in Müller, *Documenti*, p. 42, lines 45-58 and the Latin translation on p. 51, lines 36-51, no XXXIV: "...Recepimus huiusmodi placens nobis largifluum munus serenissimi et semper augusti imperatoris domini Ysaakii Angeli, quod imperium eius sanctum nostrae terrae fecit, et oblivioni tradentes omnia quae petiimus, ut dictum est, quae et superis recitata sunt, quoniam quidem et imperium eius sanctum abolitionem dapmnorum usque nunc hominibus Romaniae illatorum nobis facere dignatum est. Ecce per presens scriptum nostrum...conventionem facimus ad imperium eius sanctum..."

3.2.2 Making the treaty

The emperor adds that this chrysobull is granted to the Pisans as a declaration of what they have promised to him, his empire, its heirs and successors and to the Byzantines. Similarly, it is a record of what he has granted to them; the chrysobull contains a detailed report of all that has been agreed to (word for word), including what has been expressed in Latin letters in a document signed by the Pisans and confirmed by a corporal oath.[539] During the negotiations between the two parties, texts were translated so that the Italian envoys could understand what they signed. In this case, it seems as though the agreement made beween the emperor and the two Pisan envoys was written down in Latin (or more probably translated from a Greek text), so that it could be understood by the Pisans; this was then signed and confirmed by them by a so-called corporal oath.[540] Further on in the chrysobull, the Pisan envoys state that they will certify that the city of Pisa will observe what has been agreed with the Byzantine emperors by this act, by a corporal oath, as well as their own signatures and by the seals of the Pisan churches in Constantinople.[541] The two envoys act as representatives of Pisa and promise on behalf of Pisa that the city will observe the agreements with the Byzantine emperor. In the text that follows, they mention that this will also be promised by the *podestà* as well as the nobility and the people of Pisa, and that they will renew this oath every year according to the agreement with Emperor Manuel.[542] Afterwards, we find that a

---

[539] "..καὶ εἰς δήλωσιν τῶν παρ' αὐτῶν τῇ βασιλείᾳ μου καὶ τοῖς κληρονόμοις καὶ διαδόχοις αὐτῆς καὶ τοῖς Ῥωμαίοις αἰωνίως ὑπεσχημένων καὶ τῶν παρὰ τῆς βασιλείας μου ὡσαύτως ἐπιβραβευθέντων αὐτοῖς τὸν παρόντα χρυσόβουλλον λόγον αὐτοῖς ἐπιβράβευσε, περιέχοντα κατὰ ῥῆμα τά τε παρ' αὐτῶν ἄρτι συμφωνηθέντα καὶ ἐν ὑπογράφῳ αὐτῶν ἐγγράφῳ διὰ λατινικῶν γραμμάτων διαληφθέντα καὶ σωματικῷ αὐτῶν ὅρκῳ βεβαιωθέντα..." in Müller, *Documenti*, p. 41, lines 30-38 and the Latin translation on p. 50, lines 24-33, no XXXIV: "Et ad notificationem eorum quae imperio nostro, heredibus et successoribus eius et Romaniae in perpetuum ipsi polliciti sunt et eorum quae similiter ipsis a clementia nostra collata sunt, presens chrysobolum verbum eis donavit continens de verbo ad verbum ea quae nunc ab iis pacta sunt et in cartula litteris latinis scripta et subscriptione eorum confirmata comprehensa sunt et eorum corporali sacramento corroborata,…". On the corporal oath, see chapter V,5.

[540] For information on how such treaties were made, see chapter V, 5.

[541] "...ἰδοὺ διὰ τοῦ παρόντος ἡμῶν ἐγγράφου βεβαιωθῆναι ὀφείλοντος καὶ σωματικῷ ὅρκῳ ἡμῶν καὶ ταῖς οἰκειοχείροις ὑπογραφαῖς καὶ ταῖς σφραγῖσι τῶν ἐν τῇ Μεγαλοπόλει Πισσαικῶν ἐκκλησιῶν, τοῦ τε κορυφαίου ἀποστόλου Πέτρου καὶ τοῦ ἁγίου Νικολάου, συμφωνοῦμεν πρὸς τὴν βασιλείαν αὐτοῦ [...] ἵνα φυλάττῃ τὸ κάστρον καὶ ἡ χώρα τῆς Πίσσης [..] τὰ […] συμφωνηθέντα..." in Müller, *Documenti*, p. 42, lines 52-68 and the Latin translation on p. 51, lines 44-5, no XXXIV 1. "ecce per presens scriptum nostrum, debens et corporali sacramento nostro ac subscriptionibus manus nostre, sigillisque ecclesiarum in magna urbe existentium Pisanorum, summi apostoli Petri et sancti Nicolai, corroborari, conventionem eius, et ad ipsam Romaniam".

[542] "...καὶ ταῦτα πάντα, ἵνα ὀμόσῃ καὶ αὐτὸς ὁ ἐξουσιαστὴς καὶ οἱ πρόκριτοι καὶ τὸ κοινὸν τῆς Πίσσης, ἀνακαινίζωσι δὲ καὶ καθ' ἕκαστον ἐνιαυτὸν τὸν τοιοῦτον ὅρκον, καθὰ ἰδικῶς περὶ τοῦ

new oath made by the two Pisan envoys is inserted. Here the word "σωματικὸς ὅρκος" is not mentioned but the procedure is the same. The two envoys took this oath in person; the oath was written down and then inserted into the chrysobull. In particular, the envoys swear on the Gospels and the Holy cross (ὀμνύομεν εἰς τὰ ἅγια τοῦ θεοῦ εὐαγγέλια καὶ εἰς τὸν τίμιον […] σταυρὸν)[543] and on the soul of the *podestà* of Pisa (ὀμνύομεν ἐπάνω τῆς ψυχῆς τοῦ ῥηθέντος ἐξουσιαστοῦ)[544] that he, as well as the whole community of Pisa will observe what has been agreed to with the Byzantine emperor. Finally, they promise this in good faith and without fraud (ταῦτα ὀμνύομεν μετὰ ἀγαθῆς πίστεως ἄνευ δόλου καὶ περινοίας).[545] The term "σωματικὸς ὅρκος" is mentioned once again near the end of the document. There the emperor declares that all that is agreed will be valid under the condition that the *podestà*, the consuls and the senators of Pisa accept what their envoys agreed and promised to the empire on their behalf; that this must be agreed to and confirmed by a corporal oath and put down in a document which was to be sent to the emperor as confirmation.[546] The term "σωματικός ὅρκος" is connected here to the ratification of the text of the oath; it is used as a means of assurance, as proof that the corresponding city will observe the agreement. I will return to the matter of corporal oath in a later chapter after the examination of all acts towards Pisa and Genoa, because the term is mentioned again in other documents.[547]

τοιούτου κεφαλαίου ἔφθασε συμφωνηθῆναι παρὰ τοῦ κάστρου καὶ τῆς χώρας ἡμῶν πρὸς τὸν ἀοίδιμον βασιλέα κῦριν Μανουήλ..." in Müller, *Documenti*, p. 42, lines 68-74 and the Latin translation on p. 51, lines 59-62, no XXXIV: "...Et hec omnia iurabit ipsa potestas et meliores ac ipsum commune civitatis Pisanae et huiusmodi sacramentum annuatim renovabunt, secundum quod specialiter de huiusmodi capitulo pactum est a civitate et terra nostra ad semper memorandum imperatorem dominum Manuelem..."

[543] Müller, *Documenti*, p. 42, lines 90-91, no XXXIV.

[544] Müller, *Documenti*, p. 42, lines 104-105, no XXXIV.

[545] Müller, *Documenti*, p. 43, lines 4-5, no XXXIV.

[546] "Συντηρηθήσονται τοίνυν τὰ ἀναγεγραμμένα πάντα βέβαια παρὰ τῆς βασιλείας μου καὶ τῶν κληρονόμων καὶ διαδόχων αὐτῆς καὶ τῆς Ῥωμανίας, εἴπερ καὶ ὁ ὢν ἐξουσιαστὴς ἐν τῷ κάστρῳ καὶ τῇ χώρᾳ τῆς Πίσσης καὶ οἱ κόνσουλοι καὶ οἱ σύμβουλοι καὶ οἱ σενάτωρες καὶ αἱ κεφαλαὶ καὶ οἱ ῥαίκτορες καὶ οἱ λοιποὶ πρόκριτοι καὶ αὐτὸ τὸ κοινὸν τῆς Πίσσης παραδεξάμενοι τὰ παρὰ τῶν ἀναγεγραμμένων ἀποκρισαρίων αὐτῶν συμφωνηθέντα καὶ ἐπομοθέντα πρὸς τὴν βασιλείαν μου καὶ τοὺς κληρονόμους καὶ διαδόχους αὐτῆς καὶ πρὸς αὐτὴν τὴν Ῥωμανίαν συμφωνήσουσι ταῦτα καὶ σωματικῷ διαβεβαιώσονται ὅρκῳ καὶ ἔγγραφον δὲ τούτων περιεκτικὸν ἔκθωνται καὶ συνήθως πιστώσονται καὶ τῇ βασιλείᾳ μου ἀποστείλωσι καὶ στέργουσι ταῦτα…" in Müller, *Documenti*, p. 49, lines 36-49 and the Latin translation on p. 58, lines 35-46, no XXXIV: "Conservabuntur igitur universa superius scripta firma ab imperio nostro, heredibus et successoribus eius et Romania, si potestas quae est in civitate et terra Pisana, consules, consiliarii et senators, capitanoi, rectores et reliqui meliores ac ipsum commune Pisarum receperint quae a superius scriptis legatis eorum pacta et iurata imperio nostro, heredibus et successoribus eius ipsique Romaniae sunt et pepigerint ea et corporali confirmaverint sacramento et scriptum hec continens composuerint et consuete corroboraverint et celsitudini nostrae miserint…".

[547] See chapter V,5.

3.2.3 Granting immovable property

The envoys mention that the emperor has shown leniency in confirming the former grants made to the Pisans regarding their district in Constantinople and in extending it. An act of delivery was to be made and registered together with this chrysobull at the competent imperial office.[548]

In the following passage, a description of the Pisan district in Constantinople is inserted which includes the new extension granted by the emperor. The description is rather detailed, as the emperor tries to be as specific as possible without leaving any doubts whatsoever about what is granted to the Pisans. For example, in this description the emperor mentions that which is excluded from the delivery and therefore not granted to the Pisans, more than once. A characteristic example follows:

…ἡ διακράτησις τοῦ μετοχίου τῶν Τριχιναρῶν ἔστιν ἔξω τῆς παραδόσεως, ὡς μὴ κατακρατηθεῖσα μήτε παραδοθεῖσα, τὸ δὲ πρὸς τὸ ἔμβολον μέρος τοῦ αὐτοῦ μετοχίου, τὸ ἔχον μῆκος πήχεις δέκα καὶ πλάτος πήχεις ἓξ […] παρεδόθη καὶ αὐτὸ τοῖς Πισσαίοις.[549]

…Ambitus metochii Trichinarearum est extra tradicionem, ut non detentus neque traditus. Pars vero quae versus embolum est eiusdem metochii, habens in longitudine cubitos decem et in latitudine cubitos sex […] tradita est et ipsa Pisanis.[550]

…the *diakratisis*[551] of the *metochion* of Trichinaron[552] remains outside the delivery since it has not been held in possession and has not been delivered, the part of the *metochion* however, that faces the district, the one that measures in length 10 meter[553] and width six meters […] has

[548] "...ἐπιεικείᾳ […] καὶ μεγαλοπρεπείᾳ βασιλικῇ κατένευσεν ἡ ἁγία αὐτοῦ βασιλεία, […..] εἰς τὸ ἐπιδοῦναι τῇ κοινότητι Πίσσης τὰ ἀπὸ δωρεῶν τῶν ἀοιδίμων βασιλέων, τοῦ τε κυροῦ Ἀλεξίου καὶ τοῦ κυροῦ Μανουὴλ προκατεχόμενα παρ' ἡμῶν ἐν τῇ Μεγαλοπόλει, τόν τε ἔμβολον δηλαδὴ, τὴν ἐκκλησίαν σὺν τῇ ἀνεγερθείσῃ παρὰ τῶν ὁμοφύλων ἡμῶν ἑτέρᾳ ἐκκλησίᾳ ἐντὸς τῶν συνόρων ἡμῶν καὶ τὴν παράλιον σκάλαν, ἐπέκεινα δὲ τούτων ἐπιβραβεῦσαι τῷ κάστρῳ ἡμῶν καὶ τὰ ἐν τῷ γενησομένῳ πρὸς ἡμᾶς πρακτικῷ τῆς παραδόσεως ἐπέκεινα τῶν προπαραδεδομένων δηλωθησόμενα, ὃ δὴ πρακτικὸν σὺν τῷ γενησομένῳ ἡμῖν βασιλικῷ προσκυνητῷ χρυσοβούλλῳ τοῖς σεκρέτοις καταστρωθήσεται,.." in Müller, *Documenti*, p. 41, lines 102 – p. 42, line 14 and the Latin translation on p. 50, lines 94 – p. 51, line 6, no XXXIV: "...modestia vero et magnificentia imperiali dignatum est eius sanctum imperium […] largiri Pisanae civitatis communi quae ex muneribus semper memorandum imperatorum, domini Alexii et domini Manuelis, a nobis pridem in magna Urbe possidebantur, embolum videlicet, ecclesiam cum altera a contribulibus nostris infra terminos nostros erecta ecclesia et litoralem scalam; plus vero his dare civitati nostrae et quae in faciendo nobis practico tradicionis eorum quae super pridem nobis tradita collata sunt, notificabuntur, quod scilicet practicum una cum faciendo imperiali adorando chrysobullo in secretis sternetur;...".

[549] Müller, *Documenti*, p. 47, lines 63-70, no XXXIV.

[550] Müller, *Documenti*, p. 56, lines 52-59, no XXXIV.

also been delivered to the Pisans.

It is clear from this passage that the Pisans were not granted the *metochion* of the Trichinarioi; it remained out of the delivery (ἔστιν ἔξω τῆς παραδόσεως).[554] However, a part of the *metochion* that faces their district, the dimensions of which are described in detail, along with its buildings and rooms is delivered to the Pisans. The term "not held" is expressed in the Greek text with "μὴ κατακρατηθεῖσα" (depends from "ἡ διακράτησις τοῦ μετοχίου"), which is translated in the Latin text as *non detentus* (depends from *ambitus metochii*). In Greek, the term "μήτε παραδοθεῖσα" (subj. = ἡ διακράτησις τοῦ μετοχίου) is used to describe how this *metochion* "has not been delivered", translated in Latin as "neque traditus" (subj. = *ambitus metochii*).

Detailed information is also given regarding the buildings of the Pisans that will be built in this area. The Pisans are not free to build their buildings in this area, as they would like, but must observe some restrictions regarding the construction of the buildings, mainly in relation to where their foundations will be. It is mentioned that the buildings of the Pisans must be supported by their own columns and walls, which must be on the side of the *metochion* of Holobobon.[555]

Further on, when the emperor refers to the landing-stages (*scalai*)[556] granted to the Pisans, he mentions that new buildings must be similar to the ones that already exist there.[557] It is obvious from these examples that the emperor intends absolute clarity about what is granted to the Pisans in Constantinople from now on and what the restrictions are in connection with immovable property.

---

551 The term "διακράτησις" is a technical term and that is why I have not translated it into English. On this term, see *Actes de Lavra*, pp. 100-101, no 4.

552 See Janin, *Géographie*, p. 488.

553 The word *pechys* (πῆχυς) in the Greek text is used as a measure of lenth and corresponds to 46,8 cm.; that is approximately the distance from the point of the elbow to that of the middle finger, see Schilbach, *Byzantinische Metrologie*, pp. 20-21.

554 On what exactly was being delivered and granted to the Pisans (and Venetians and Genoese) in respect of immovable property, see chapter V, 2. Other examples in which the emperor uses the expression "ἔξω τῆς παραδόσεως" or similar can be found in Müller, *Documenti*, p. 48, line 58 and p. 49, lines 5-6 and 8, no XXXIV.

555 "…τὰ δὲ κτισθησόμενα οἰκήματα παρὰ τῶν Πισσαίων ὀφείλουσιν ὑποστηρίζεσθαι διὰ οἰκείων ὀρθῶν καὶ τοίχων ὀφειλόντων εἶναι πρὸς τὸ μέρος τοῦ μετοχίου Ὁλοβώβων…" in Müller, *Documenti*, p. 47, lines 60-63 and the Latin translation on p. 56, lines 49-52, no XXXIV: "Habitacula vero quae a Pisanis edificabuntur, debent substineri per proprias eorum columnas et proprios muros, qui debent versus partem metochii esse ex toto clausi."

556 On the term "σκάλα", see Maltezou, *Il Quartiere*, p. 32.

557 "..ἐπ' αὐτῷ τῷ ἐδάφει ὀφείλουσιν ἀνεγερθῆναι οἰκήματα χαμαίγαια ὅμοια τοῖς ἐκεῖσε νῦν οὖσιν,…" in Müller, *Documenti*, p. 48, lines 72-74 and the Latin translation on p. 57, lines 67-69, no XXXIV: "in ipso fundo debent erigi habitacula terranea similia iis quae nunc ibi sunt."

The emperor confirms his grant of immovable property:

...καὶ διορίζεται κατέχεσθαι τὰ τοιαῦτα πάντα παρὰ τοῦ μέρους τοῦ κάστρου καὶ τῆς χώρας τῆς Πίσσης εἰς τοὺς ἑξῆς ἅπαντας καὶ διηνεικεῖς χρόνους κατὰ τὸ γενησόμενον πρακτικὸν τῆς τούτων παραδόσεως πρὸς τοὺς διαληφθέντας ἀποκρισιαρίους αὐτῶν παρά τε τῶν γραμματικῶν τῆς βασιλείας μου, τοῦ τε Πεδιαδίτου Κωνσταντίνου, τοῦ μεγαλεπιφανεστάτου πρωτονωβελισίμου Σεργίου τοῦ Κολυβᾶ καὶ τοῦ δεσιμωτάτου Κωνσταντίνου τοῦ Πετρίωτου τὸ καὶ καταστρωθῆναι ὀφεῖλον τοῖς προσφόροις σεκρέτοις σὺν τῷ παρόντι χρυσοβούλλῳ τῆς βασιλείας μου καὶ ἀποκερδαίνειν τοὺς Πισσαίους πᾶσαν τὴν ἐξ αὐτῶν εἴσοδον, τήν τε νῦν οὖσαν καὶ τὴν ἐσομένην ἐξ ἐπιποιήσεων αὐτῶν ἐντὸς τῶν παραδεδομένων αὐτοῖς συνόρων γινομένων, μέχρις ἂν τὴν πρὸς τὴν βασιλείαν μου καὶ τοὺς κληρονόμους καὶ διαδόχους αὐτῆς καὶ πρὸς αὐτὴν τὴν Ῥωμανίαν πίστιν καὶ δουλείαν συντηρῇ τὸ κάστρον καὶ ἡ χώρα τῆς Πίσσης καὶ αὐτὸ τὸ κοινὸν αὐτῆς ἀπαράθραυστον καὶ ἀκολόβωτον...[558]

Et iubet huiusmodi omnia a parte civitatis et terrae Pisanae possideri a modo per omnes et assiduos annos secundum faciendum practicum horum tradicionis, quod fiet notificatis legatis eorum a grammaticis imperii nostri Pediadita Constantino[559] et clarissimo prothonobilissimo Sergio Coliva, et a desunotato Constantino Petriota[560] quod et in congruis secretis sterni debet cum presenti chrysobulo imperii nostri. Et habere Pisanos universum introitum eorum presentem et futurum ex superedificationibus ipsorum quas infra terminos ipsis traditos faciunt, quousque civitas quam debet imperio nostro, heredibus et successoribus eius ipsique Romaniae fidem atque servicium conservat et terra Pisana ac ipsum eius comune inviolabiliter et sine diminutione…[561]

... and orders that all this is possessed by the community and the land of Pisa for all the times to come according to the act of their delivery, which will be made for the said envoys of them by the secretaries of my Majesty, Constantine Pediadites, the *megalepiphanestatos protonobelissimos* Sergios Kolybas and the *desimotatos* Constantine Petriotes, which has to be registered at the competent offices together with the present chrysobull of my Majesty; and [orders] that the Pisans have the whole income of these, both the one that exists and the one that will be formed from what will be added to it from within the borders that have been granted to them, as long as the castle and the land of Pisa and its community observes inviolable and firm its loyalty and services towards my Majesty and her heirs and successors and towards Romania itself...[562]

[558] Müller, *Documenti*, p. 46, lines 44-62, no XXXIV.
[559] For more on Constantine Pediadites, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 30, p. 215, commentary, lines 49-50.
[560] Gastgeber, *Übersetzungsabteilung*, vol. 3, no 30, p. 215, commentary, line 51.
[561] Müller, *Documenti*, p. 55, lines 34-50, no XXXIV.
[562] This translation is based on the Greek text.

Hence, an act of delivery has to be made (πρακτικὸν παραδόσεως) by three imperial officials and registered at the competent office together with the chrysobull. The whole procedure regarding the formalities of the grant is thus similar to those that we have seen in our acts up to now.

In an earlier act for Venice, the Latin word "introitus" had raised some questions.[563] In this chrysobull, the word is mentioned again in the Latin text and is a translation of the word "εἴσοδος" in the original Greek text.[564] Here the word "εἴσοδος" clearly means "income." The fact that it is translated in Latin as *introitus* strengthens the argument that the person translating was possibly a Greek native speaker who probably had some lists for the translation of documents at his disposal and that he chose the word *introitus* in Latin to translate the Greek "εἴσοδος"; in other words, a Latin native speaker would have used another word in Latin to describe "income".[565]

In the text that follows, the emperor guarantees the aforementioned grant of the Pisans. It is promised that the Pisans will enjoy this grant and that they will never be transferred to another district.[566] The emperor adds:

...κἂν γὰρ καὶ ἔφθασαν τὰ τοιαῦτα πάντα παραδοθῆναι τοῖς μοναστηρίοις καὶ τοῖς προσώποις, ἐξ ὧν ἀφαιρεθέντα τοῖς Πισσαίοις παρεδόθησαν, ἀλλ' ἐπεὶ αὖθις οἱ τοιοῦτοι Πισσαῖοι ὑπὸ τὴν δουλείαν τῆς Ῥωμανίας γεγόνασι καὶ τὴν προτέραν πίστιν αὐτῶν καὶ δουλείαν τῇ βασιλείᾳ μου καὶ τοῖς κληρονόμοις καὶ διαδόχοις αὐτῆς καὶ τῇ Ῥωμανίᾳ φυλάττειν ἐπωμόσαντο, ἀφῃρέσθησαν αὖθις ἐξ	Quamvis enim huiusmodi omnia iam tradita fuerint monasteriis et personis quibus haec ablata sunt et Pisanis tradita, attamen, quoniam iterum huiusmodi Pisani sub servicio Romaniae ordinati sunt et pristinam suam fidem atque servicium Imperio nostro, heredibus et successoribus eius et Romaniae, observare juraverunt, rursum eis ablata sunt et restituta Pisanis, quoniam ipsi satisfactionem a fisco habere debent; Si vero non habuerint, non debent in Pisanos agere, sed in ipsum fiscum, infra	...even if all these have been given to the monasteries and to the persons, from whom they had originally been taken away and handed over to the Pisans, yet, because these Pisans are once again under the power of Romania and have sworn to observe their earlier faith and service to my Majesty and to its heirs and successors and to Romania, they [the things] were once more removed from them [the monasteries etc.] and

[563] Reg. 1590 in chapter II, 6.2.

[564] Note that the term "introitus" was also used in the civil law of procedure during Justinian's time and was connected with one of the first stages of the trial, the *principium litis*, see Simon, *Zivilprozess*, pp. 16-18. However, in our case the term is clearly not used in connection to the legal process of a trial.

[565] For example, "redditus".

[566] "...ἀπολαύσουσι τοίνυν οἱ Πισσαῖοι τῆς χαρισθείσης αὐτοῖς ἐξκουσσείας παρὰ τῆς βασιλείας μου καὶ πάντων τῶν δεδωρημένων αὐτοῖς, ὡς ἀνωτέρω δεδήλωται, καὶ μετακινηθήσονται τούτων οὐδέποτε·" in Müller, *Documenti*, p. 46, lines 96-99 and the Latin translation in p. 55, lines 82-85, no XXXIV: "Fruentur igitur Pisani libertate ipsis collata a nostra serenitate et omnibus ipsis donatis, ceu superius patefactum est, et ammovebuntur ab his nunquam".

αὐτῶν καὶ τοῖς Πισσαίοις ἀποκατέστησαν, ὡς τῶν τοιούτων τὸ ἱκανὸν ἔχειν ὀφειλόντων ἀπὸ τοῦ δημοσίου, κἂν μὴ σχῶσι δὲ, μὴ κατὰ τῶν Πισσαίων ὀφειλόντων ἐνάγειν, ἀλλὰ κατὰ τοῦ δημοσίου αὐτοῦ ἐντὸς τοῦ νενομισμένου καιροῦ, κἂν μὲν τύχωσιν ἀντισηκώσεως, ἔχειν τὸ ἱκανὸν διὰ τοῦ δοθέντος, κἂν μὴ σχῶσι δὲ, στέργειν ὡς τῆς βασιλείας μου ἐπ' ἀδείας ἐκ τῶν νόμων ἐχούσης ἐν εἰδήσει δωρεῖσθαι καὶ τὰ ἀλλότρια καὶ οὕτω δωρουμένης τὰ τοιαῦτα τῷ τῆς Πίσσης πληρώματι.[567]

legitimum tempus. Et si restaurationem adepti fuerint, habebunt satisfactionem per id quod dabitur; si autem non adepti fuerint, habebunt pro rato quoniam Imperium nostrum licentiam ex legibus habet in noticia largiendi et aliena, et largitur hec Pisarum plenitudini.[568]

were given back to the Pisans, because these persons should be satisfied by the state; and if they do not receive [compensation], they cannot raise legal actions against the Pisans but against the state itself within the legal time; and if they obtain compensation they must be satisfied with what has been given, and if they do not obtain it, they must acquiesce, because my Majesty is allowed according to the laws fully and knowingly to donate even other people's property and thus to satisfy the people of Pisa.

According to this abstract, property that was given to the same monasteries or persons from whom it had originally been taken away was returned to Pisans. The emperor mentions that nobody has the legal right to turn against the Pisans, but if someone wants to request compensation for what he has lost as a result of it being returned to the Pisans, he must make this request within the legal period.

No particular deadline is mentioned, but the term "ἐντὸς τοῦ νενομισμένου καιροῦ" is used (and in Latin *infra legitimum tempus*) meaning within the legal time. We have already seen in a former act[569] that this and other similar terms (such as "κατὰ τὸν νενομισμένον καὶ ἐνδεχόμενον καιρὸν") are used in Byzantine legal texts when a specific deadline is not mentioned; however, the intention is that the provisions in each act must be exercised within the usual legal time-frame.

In the aforementioned passage from the chrysobull, the emperor adds that if these persons (Byzantines), obtain compensation, they have to be satisfied; likewise, if they do not obtain it, they will not receive anything because after all, it is the emperor himself who has the right to regulate the grants. This

[567] Müller, *Documenti*, p. 46, line 99 - p. 47, line 11, no XXXIV.
[568] Müller, *Documenti*, p. 55, lines 85-101, no XXXIV.
[569] Reg. 1255 in chapter III,1.2.1.2.

is followed by a description of the area granted, something that we have also seen in other grants of immovable property in our acts.

4. The two letters of Isaac II Angelos regarding Pisa (Reg. 1618, Reg. 1651)

There are two letters preserved by emperor Isaac II Angelos regarding Pisa. The first is dated 1194,[570] for which we have only the Latin translation, whereas the second letter dates from 1199[571] and is preserved only in Greek. In the first letter, the emperor refers to his former chrysobull by which he had extended the Pisan district in Constantinople and had expanded the exemption of the *kommerkion*[572] tax for the Pisans. This chrysobull was sent by the emperor to Pisa through two Pisan envoys, Rainerio Gaitano and the judge Sigerio.

We are informed from this letter that some Pisans attacked a ship that carried amongst other passengers, Byzantine envoys, messengers of the sultan of Egypt Saladin, and Byzantine merchants returning from Egypt.[573] The city of Pisa sent two envoys to the emperor in order to negotiate this issue and settle the whole affair. But as the Pisan envoys approached Constantinople, they were attacked near the harbour of Abydos by some other Pisans, who used the excuse of the war with the Venetians to justify their actions. The pirates ignored not only the orders of the emperor but also the orders of the Pisan envoys, as well as the letters of their consuls and the letters of the Pisan count and vice-count. After a notice that imperial war ships were approaching, the Pisan pirates fled. However, a new ship approached which belonging to two other Pisans, and proceded to cause serious damage to the Greek ships before Constantinople. Despite all this, the emperor granted the Pisan envoys a chrysobull,[574] which confirms the earlier chrysobull of 1192.[575]

By this letter, the emperor sends the envoy Jacob (Giacomo, Iacobo)[576] who is interpreter of Latin to Pisa to negotiate with the Pisans. They are given an *ultimatum*: they must stop these evil acts or provide remedy.[577] The emperor

[570] Reg. 1618.
[571] Reg. 1651.
[572] On the *kommerkion* tax, see *ODB*, vol. 2, pp. 1141-42 and Oikonomides, *Byzantine State*, especially pp. 983-988, 1007-1008, 1050-1055.
[573] This must be the attack made by Genoese pirates also, for which we have information in Reg. 1612 and Reg. 1616.
[574] Reg. 1612b; we have only indirect references to this chrysobull.
[575] Reg. 1607.
[576] For additional information on this interpreter, see Gastgeber, *Übersetzungsabteilung*, vol. 2, pp. 382-388.
[577] "...presentem hominem suum Iacobum, interpretem literarum latinarum, legatum ad vos transmisit de huiusmodi negotio vobiscum tractaturum et omnimodam prohibitionem huiusmodi mali a civitate et regione vestra ordinari postulaturum a vobis, aut modum

then gives instructions for the negotiations of Jacob with the Pisans. The name Iacobo, also mentioned as Jacobus Pisanus, appears in other Byzantine imperial acts.[578] What is obvious from the information within this letter is that the emperor faces a difficult situation. Pisa is undoubtedly in a favourable position. Although Pisa can not control its own subjects, the emperor is still willing to negotiate with Pisa and confirm their former privileges. Finally, the emperor issues a second short letter in a form of a *sigilion*[579] in 1199, which is preserved only in Greek, as mentioned above, in favor of the two Pisan envoys, Uguccione and Modano who are returning to Pisa. It is ordered that they should not be burdened by any tax whatsoever nor prevented from going back to Pisa. The envoys would have used this letter before Byzantine officials whom they would have come across on the journey back home.

aliquem medelae huius dari a vobis exacturum" in Müller, *Documenti*, p. 67, lines 53-59, no XXXIV.

[578] See Reg. 1600 (year 1189) and Reg. 1602 (year 1190), missions of two Byzantine envoys (of which one of them is the Pisan Jacob) to the German emperor Frederick I to negotiate a peace treaty and Reg. 1603 (year 1190) which includes the treaty.

[579] Reg. 1651, Dölger, *Regesten*, pp. 330-331.

CHAPTER IV – Acts directed at Genoa[580]

The Komnenian dynasty

1. The chrysobull of Manuel I Komnenos in 1169 (Reg. 1488)

1.1 Introduction

The first preserved Byzantine imperial chrysobull to Genoa was granted in 1169 by Manuel I Komnenos.[581] Today only the Latin translation of this chrysobull has been preserved in two versions, both of which are kept in the state archives of Genoa. As Dölger points out, the differences between these versions are not located in the content of the act but rather deal with linguistic matters.[582] Different legal terms are used at parallel points within both versions, and that is why I will refer to both versions when needed; however, if one version is sufficient, I will use the version which at that point makes more sense. I have chosen the edition edited by Cesare Imperiale di Sant' Angelo because it is one of the most recent editions and it includes complete versions of the two Latin translations of this chrysobull.[583] This chrysobull contains the oath of a Genoese envoy named Amico de Murta. A Greek version of this oath is preserved in a later act.[584] For a more thorough comparison of Greek and

[580] For political and commercial aspects referring to all the acts directed at Genoa, see Lilie, *Handel und Politik*, 1984, pp. 84-102. For an overview of Genoa's diplomacy with Byzantium, see Day, *Genoa's response*, pp. 15-46 which contains an extensive bibliography. There has been much discussion about the dating and ratification of Byzantine acts referring to Genoa, see, for example, Lilie, *Handel und Politik*, pp. 84-102, especially p. 86, footnote 6, p. 91, footnote 19, p. 96, footnote 32 and Day, *Genoa's Response*, p. 41, footnote 47. For registration and dating, I have relied upon Dölger, *Regesten*.

[581] Reg. 1488.

[582] See Dölger, *Regesten*, p. 256

[583] *Codice Dipl. Genova*, vol. II, pp. 104-116, no 50 including both versions, Q and C. While this edition is not mentioned in Dölger, *Regesten* a list of other editions does appear; for a summary of this act, see Dölger, *Regesten*, p. 256. In the edition that I have used, a text is inserted in a footnote near the end of the document; it is entitled "emendationes", see *Cod. Dipl. Genova*, vol. II, p. 114, footnote (I), no 50. This text is not part of the chrysobull but is rather a text that the envoy had to take into consideration when he entered the agreement with the emperor. These 'corrections' are addressed to the envoy; this is clearly seen from the fact that the verbs are used in a second person singular form in other words they are instructions from the Genoese to their envoy.

[584] The chrysobull of Isaac II Angelos in 1192 (Reg. 1609), see *MM*, p. 33, lines 32 – p. 34, line 35, no V; the Greek version of the oath is not identical to the Latin version of the oath. This chrysobull is preserved in Greek with a Latin translation and it contains another chrysobull by Manuel I Komnenos issued in 1170 (Reg. 1498), the legal matters of which are similar to the legal matters of the first chrysobull of Manuel I Komnenos (Reg. 1488).

Latin legal terms, I will therefore use the Greek text of the oath in instances where the legal provisions are very similar.[585] The envoy, promises, on behalf of Genoa, that this city will not help any nation that is an enemy of the Byzantines. Moreover, the Genoese living within the empire will help defend the Byzantines if attacks are mounted against the empire. Amico confirms that this convention will be observed by the Genoese both for the current emperor, Manuel, and for all of his successors. For their loyalty, the Genoese receive immovable property in Constantinople, as well as money. Provisions regarding the tax of *kommerkion* are also included.[586]

The longest part of the chrysobull is actually the oath of the Genoese envoy, Amico de Murta.[587] The main objective of the Genoese is to acquire specific grants from the emperor. Genoa was, after all, the last of the three Italian cities to receive a Byzantine imperial chrysobull, and this rather late. The Venetians had already received imperial grants from the Byzantines in 992 and the Pisans in 1111. By 1169 the Genoese had only just received their first chrysobull from the Byzantine emperor. That the Genoese were eager to receive grants similar to the other Italians is obvious from the *emendationes*, the instructions that were given from the city of Genoa to her envoy in order to negotiate with the emperor and receive this chrysobull.[588] In these *emendationes*, the Genoese instruct their envoy on the negotiations to be made with the emperor and more than once they refer to grants that the Venetians and Pisans have received in the past. For example, they instruct their envoy to ask for specific areas (landing places, disticts and churches) in Constantinople, similar to those requested by the Venetians; if they do not succed in receiving these areas, the envoy is to request other areas similar to those received by the Pisans.[589] While a number of legal issues are settled in this chrysobull, there is not really a systematic approach to these issues. For a better examination of these legal issues I have divided them into three categories: i. information regarding the making of the treaty and the mandate of the envoy, ii. provisions referring to matters of justice for the Genoese subjects, such as competent courts and the issue of a guarantor in a trial and finally, iii. shipwreck provisions.

---

[585] However, as we will see, this Greek text does not always literally correspond to the chrysobull in Latin that is examined here.

[586] For a summary of the act and bibliography related to it, see Dölger, *Regesten*, pp. 255-256; for commercial and political aspects, see also Lilie, *Handel und Politik*, pp. 87ff.

[587] The oath begins on p. 105, line 16 (version Q) in *Cod. Dipl. Genova*, vol. II, no 50: "In nomine Patris et Filii et Spiritus sancti amen. Ego Amico de Murta [...] iuravero et conveniero..." and ends on p. 113, line 26: "in sempiternum et semper."

[588] These instructions are included in the edition of *Cod. Dipl. Genova*, vol. II, on pp. 114-116 in footnote (I), no 50.

[589] See *Cod. Dipl. Genova*, vol. II, p. 115, in the footnote, lines 8-13, no 50: "in magna urbe Constantinopolitana tot scalas et embolos cum ecclesiis et omni suo commodo quot Veneti habebant, postuletis, vel saltem ad ultimum si melius non possetis, quot Pisani habent".

1.2 Legal Issues

1.2.1 Making the treaty and the mandate of the envoy

In the beginning of the chrysobull of 1169, the emperor mentions that the Genoese, in particular the archbishop of Genoa, the consuls and all the citizens of Genoa have sent a wise envoy, named Amico de Murta to the emperor and have entrusted him with the power to negotiate and conclude a treaty with the emperor.[590] The emperor states that the two parties have indeed negotiated and reached an agreement, which the envoy has confirmed by oath.[591] This oath is then inserted into the chrysobull. Amico de Murta begins his oath by confirming, first of all, that he acts as a representative of the archbishop of Genoa, of the consuls and of all the citizens of Genoa and that he has received from them the power and the mandate (*potestatem et mandatum*) to promise and make an agreement with emperor Manuel.[592]

In version Q the emperor uses the word *nuntius*[593] in referring to Amico, while Amico himself uses the word *legatus*.[594] An explanation of why two different words are used to describe the same term in the same text could be that in the first instance, where *nuntius* is mentioned, it is the emperor who speaks; whereas in the second instance, where the word *legatus* is mentioned, it is the envoy himself who is speaking. In version C we also come across two terms: *legatus* and *transmissus*, the latter not being a technical term.[595]

It would have been interesting see whether two different words to describe the word "envoy" also appeared in the Greek text; however, this is

[590] "...archiepiscopus civitatis Ianue et sapientissimi consules et universus Comune eiusdem civitatis mittentes ad imperium meum sapientem nuncium eorum Amicum de Murta, dederunt ei potestatem tractare et conventare cum imperio meo de quibus voluerint." in *Cod. Dipl. Genova*, vol. II, version Q, p. 105, lines 2-10, no 50.

[591] "...ille autem ad imperium meum perveniens et de his negociis sufficienter tractans hanc conventionem hic ostensam fecit et sacramento confirmavit." in *Cod. Dipl. Genova*, vol. II, version Q, p. 105, lines 10-15, no 50.

[592] See *Cod. Dipl. Genova*, vol. II, version C, p. 105, lines 18-28, no 50. In version Q the expression "potestatem et iniunctum" appears. See *Cod. Dipl. Genova*, vol. II, version Q, p. 105, lines 17-28, no 50.

[593] See *Cod. Dipl. Genova*, vol. II, version Q, p. 105, lines 5-17, no 50: "…ad imperium meum sapientem nuncium eorum Amicum de Murta…"

[594] See *Cod. Dipl. Genova*, vol. II, version Q, p. 105, lines 17-18, no 50: "Ego Amicus de Murta civis Ianue legatus…".

[595] See *Cod. Dipl. Genova*, vol. II, version C, p. 105, lines 18-28, no 50: "…, ego Amicus de Murta qui sum ianuensis, transmissus ab archiepiscopo Genue et consulibus et ab omni multitudine civitatis Genue accipiens potestatem en mandatum ab eis ut quicquid iuravero conventionem faciens in persona Genuensium cum sanctisstimo et excellentissimo imperatore Romeon Porphirogenito domino Manuel Comneno foveri". (Note that at this point the Latin of this version is more understandable than the Latin of version Q: namely, the *quisquis* in version Q must be an error as the *quicquid* in version C makes more sense).

impossible as the original Greek text is lost. Presumably the word *legatus* would have corresponded to the Greek "ἀποκρισάριος". In Genoese documents the word *legatus* is used to describe their envoys.[596] The emperor uses the expression "potestatem tractare et conventare" to express the mandate of the Genoese envoy. Amico de Murta mentions that he was given this power by the Genoese (*accipiens potestatem*) and that he has been ordered by them to promise and make an agreement with the emperor.[597]

In the beginning of his oath, the envoy clarifies that he also swears this oath on behalf of the archbishop, the consuls and the whole city of Genoa.[598] He ends his oath by mentioning once again his mandate from the city of Genoa and that he has promised everything in good faith.[599]

Version Q:	Version C:	
Sicut de capitulo coronati tractatum est in curia domini impe-ratoris et intellectum et interpretatum est michi et a me confirmatum ad honorem et proficuum eius imperii e Romaniae sicut et ego debeo hoc interpretari Ianuensibus ut et in antea sic istud capitulum intelligatur et observetur….[600]	De coronato capitulum pertractatum est in aula domini imperatoris et intellectum est michi per interpretationem et probatum a me ad honorem et utilitatem imperii eius et Romanie. quod quidem sic debeo et ego Genuensibus interpretari ut utique et in his que sequentur sic huiusmodi capitulum intelligatur et	As the issue concerning the crowned [leader] has been dealt with in the court of the *kyr* emperor and has been understood and translated to me and has been confirmed by me for the honour and the benefit of His Majesty and Romania, just so, must I also explain this to the Genoese to the purpose that this subject will be in the past also understood and observed.[602]

[596] See *Cod. Dipl. Genova*, vol. II, p. 74, lines 15-16, no 29: Amico de Murta is mentioned as *legatus* by the Genoese; *Cod. Dipl. Genova*, vol. II, p. 121, line 17, no 53 Amico mentions that he is a *legatus* of Genoa; *Cod. Dipl. Genova*, vol. III, p. 75, lines 9-10, no 24: Amico de Murta is mentioned as *legatus* of Genoa by the Genoese; in the same act the envoys Guillielmo Tornello and Guido Spinula are mentioned as *legati* of Genoa by the Genoese in *Cod. Dipl. Genova*, vol. III, p. 75, lines 6-7 and p. 77, lines 7-8 and line 15, no 24; in the same act the Genoese mention two Byzantine officers, Nikephoros Pepagomenos and Gerardo, as *legati* of the emperor in *Cod. Dipl. Genova*, vol. III, p. 76, lines 5-6 and p. 77, lines 20-21, no 24; *Cod. Dipl. Genova*, vol. III, p. 194, lines 11-12, p. 195, line 11, no 77.

[597] "..et iniunctum ab eis ut quisquis iuravero et conveniero vice Ianue cum...imperatore Romeon." In the second version, Amico also mentions that he received the power and the mandate from the Genoese, see *Cod. Dipl. Genova*, vol. II, p. 105, version C, lines 22-23, no 50.

[598] "…et iuro ex voluntate archiepiscopi et consulum et tocius communis civitatis Ianue" in *Cod. Dipl. Genova*, vol. II, version Q, p. 105, lines 29-31, no 50.

[599] "…et iuro sine fraude et malo ingenio ex precepto et voluntate archiepicopi, consulum et tocius civitatis Ianue comunis..." in *Cod. Dipl. Genova*, vol. II, version Q, p. 113, lines 19-23 and version C in p. 113, lines 24-28, no 50: "et iuro absque dolo et malo ingenio aliquo ex precepto et voluntate archiepiscopi et consulum et comunis tocius civitatis Genue."

[600] *Cod. Dipl. Genova*, vol. II, version Q, p. 106, line 24 – p. 107, line 1, no 50.

conservetur.[601]

The issues that arise from these abstracts primarily concern the mandate of the envoy. The reason these terms have been read so closely and that the differences have been preserved is that they reflect the nature of the envoy's power. As we will see in chapter V, in the Middle Ages there was a distinction between envoys and there were significant differences in their functions. Because this issue refers to more acts than the one studied here, I will return to this issue after having examined all the acts and make a comparative analysis to matters dealing with the mandate of the Italian envoys.[603]

[601] *Cod. Dipl. Genova*, vol. II, version C, p. 106, line 25 – p. 107, line 3, no 50.
[602] This translation is based on version Q, cited in the left column.
[603] See chapter V,5.2.

1.2.2 Justice

The inserted oath of the Genoese envoy contains information about matters of justice regarding Genoese citizens within Byzantium:

…de offensionibus vero quas fortasse Ianuenses fecerint in terris domini imperatoris Grecis vel aliis gentibus que non sint Ianuenses, debent iudicari in curia domini imperatoris, sicut Venetici et cetere Latine gentes. Si vero contigerit Ianuenses aliquos depredari aliquando vel aliter ledere aliquam terram domini imperatoris vel homines eius, dabitur super hoc noticiam Ianue civitati ab imperatore sive per literas sive per nuncium, et dabunt operam sine dolo et fraude invenire eos et facere ex eis iusticiam et vindictam ad honorem domini imperatoris spectantem. Si forte isti malefactores inventi non fuerint, similiter fiat vindicta in bonis eorum.[604]

…de offensis autem quam forte facient Genuenses in regione imperatoris in Grecos vel in alienigenas alios, qui non sunt Genuenses, iudicabuntur ab aula domini imperatoris quemadmondum Vene-tici et relique Latine generationes. si autem acciderit aliquando quod aliqui Genuenses depopulentur vel aliter ledant aliquam regionem domini imperatoris aut homines ipsius, dabitur notitia Genue ab imperatore aut per scriptum vel per legatum et ipsi solliciti erunt absque dolo et malo ingenio invenire male-factores et facere in eos iustitiam et ultionem que spectet ad honorem domini imperatoris, si autem forte non inveniatur huiusmodi fiet in res eorum ultio similiter.[605]

...regarding the damage that the Genoese may cause within the territories of the *kyr* emperor against Byzantines or other people who are not Genoese, they have to be judged in a court of the *kyr* emperor; the same holds for Venetians and other Latin people. If, however, any Genoese should ever plunder or bring other damage to any territory of the *kyr* emperor or his men, this has to be reported to the city of Genoa by the emperor either by letter or by messenger and they will exert themselves without deceit and fraud to find those who have done this damage and to administer justice and retribution for the honour of the *kyr* emperor. If the wrong-doers are not found, a claim will be in like way exercised on their estate.[606]

---

[604] *Cod. Dipl. Genova*, vol. II, version Q, p. 109, lines 18 – 110, line 5, no 50. As mentioned in the introduction, an abstract of the oath of Amico de Murta is inserted in a later chrysobull by Isaac II Angelos (Reg. 1609, year 1192) which is preserved in Greek. From that Greek version, the following section seems to correspond to the part of the Latin version underlined above: "καὶ ἐάν τις Γενουίτης ποιήσῃ πταῖσμα τῇ βασιλείᾳ αὐτοῦ ἢ τοῖς ἀνθρώποις τῆς βασιλείας αὐτοῦ, οἱ κόνσουλοι τῆς Γενούας μετὰ καλῆς πίστεως ἵνα ἔχωσι χρέος ποιῆσαι δίκαιον μετὰ τὸ λαβεῖν εἴδησιν παρὰ τοῦ κυρίου βασιλέως..", in *MM*, vol. 3, p. 34, lines 21-24, no V.

[605] *Cod. Dipl. Genova*, vol. II, version C, p. 109, line 21 – p. 110, line 8, no 50.

[606] The translation is based on version Q, cited in the left column.

There are two important issues regulated with these provisions: the first is the naming of the competent courts to judge the Genoese and the second is a form of legal co-operation that is established between Byzantium and Genoa in matters of justice.

In respect of the first of these provisions, it is mentioned that Genoese who cause damage within the territories of the empire against Byzantines or other people who are not Genoese, will be judged by the imperial courts.[607] It is interesting that the emperor also refers to the damage that the Genoese could cause not only to Byzantines or Genoese, but also to others, namely foreigners. In other words, the emperor regulates legal issues that arise between Genoa and others because these issues are brought up within his territory.

He mentions, moreover, that Venetians and other Latin people are also to be judged in the imperial court. In saying this, the emperor most likely means all Latin speaking people, namely everyone who addressed him in Latin. Venetians in particular, as we have seen, are mentioned in this act. Based on the information provided by the chrysobull of 1169, it seems that at the time of Manuel I Komnenos (1143-1180), when this act was issued, cases regarding all Latin people were judged in a high imperial court.

With regard to terminology, the expression "offensionem facere" is used in the beginning of version Q of the Latin text (while in version C the expression "offensum facere" is used). Unfortunately, the beginning of the above cited text in Latin does not correspond to the preserved Greek text of the later chrysobull of Manuel I Komnenos in 1170.[608] However, as I have previously explained, since the preserved Greek text does not literally correspond to the Latin text it is unclear which terms in Greek directly correspond to the terms in the Latin text. It is also not clear if the provision refers only to civil cases or to both civil and criminal cases, but since nothing is mentioned, it is plausible that it refers to both civil and criminal cases.

In respect of the second issue, as we have seen also in the case of Pisa,[609] a form of legal co-operation was being established between Byzantium and Genoa. We are informed by the oath of the Genoese envoy that the two parties have agreed that, if a Genoese harms a Byzantine subject, this has to be reported to the city of Genoa by the Byzantines, and that Genoa must help in seeking justice. The verbs *depraedor* and *depopulor* are used in versions Q and C respectively which mean "to ravage", "to pillage" or "to plunder."[610] The expression "laedere" is used in both versions of the Latin text; in the preserved

[607] Here the Latin is different from the Greek. In the latter text the term "ποιήση πταῖσμα" is mentioned, whereas in the Latin the expressions "depredari ...vel...ledere" are used. However, because the Greek text used here does not correspond litterally to the Latin text, I have my reservations about the exact translation of the term "ποιήση πταῖσμα"; for example, it is possible that the term "facere offensionem," which is mentioned some lines above in the Latin text, refers to the Greek "ποιήση πταῖσμα."

[608] Reg. 1498.

[609] Reg. 1255 in chapter III, 1.2.

[610] Lewis and Short, *Dictionary*, pp. 550-551.

Greek text of the chrysobull of Isaac II Angelos the corresponding expression is "ποιῶ πταῖσμα". Since the Latin verbs that are used mean "to pillage" or "to plunder", it is possible that this provision refers to attacks mounted by Genoese pirates, for example, or to plunderers of a district, just as had occured in different foreign districts within Constantinople. In any case, the emperor attempts to regulate cases in which the Genoese defendants try to escape. The Genoese must help in finding the wrongdoers[611] and administer justice when they find them.

The expressions "facere ex eis iusticiam et vindictam" and "facere in eos iustitiam et ultionem" used in versions Q and C of the Latin text respectively, probably mean that the Genoese can bring the wrongdoer to trial if he is found. Most interesting here is the point that, if the wrongdoers are not found within the empire, their estate may be confiscated. This last provision is not included in the Greek text of the chrysobull of Manuel I Komnenos quoted above.[612] Such a confiscation, however, requires co-operation between Byzantium and Genoa, since the estate of the Genoese in question is likely to be situated in Genoa. The emperor presumably refers to a confiscation of the goods of the Genoese wrongdoers who have not been found.

It is clear that the emperor's intention is to minimise the possibility of allowing Genoese who have committed an offence within his empire to remain unpunished because they have returned to their city. The fact that nearly the same provision is also included in a chrysobull by Alexios I Komnenos for Pisa[613] implies that such cases had occurred and that the Byzantines were highly concerned about this problem.

Further on in the oath of Amico, the emperor reassures the Genoese that they and their goods will be protected within the empire.[614] Complaints raised by Genoese against Byzantines or other persons will be judged by the imperial courts:

Version Q:	Version C:	
...si vero lesion aliqua eis ab aliquo illata vel facta fuerint, invenient iusticiam ab imperio eius secundum quod decens est. set et statim quod reclamationem fecerint	...si autem aliqua forte lesio per aliquos istis acciderit, invenient iusticiam ab imperio eius, sicut est conveniens. si et cum querimoniam fecerint contra aliquem Grecum	...but if some damage is done to them by anyone, justice will be given from the empire according to what is proper. And also whenever a legal claim is filed against some

611 This reminds us of the provision of the legal co-operation between Byzantium and Pisa.

612 Reg. 1498.

613 See the examination of Reg. 1255 in chapter III,1.2.1.1.

614 "...custodientur vero Ianuenses et res eorum integre in omnibus terris domini imperatoris…" in *Cod. Dipl. Genova*, vol. II, version Q, p 111, line 30 – p. 112, line 1, no 50; and the corresponding preserved Greek text in *MM*, vol. 3, p. 35, lines 60-61, no V, as follows: "ὀφείλουσιν δὲ φυλλάσσεσθαι οἱ Γενουΐται καὶ τὰ πράγματα αὐτῶν σῶα ἐν πάσαις ταῖς χώραις τῆς βασιλείας μου".

contra aliquem Grecum vel aliam gentem coram imperatore, invenient iusticiam in cura imperii sui.[615]	aut alterius gentis in conspectu imperatoris invenient iustitiam in aula imperii eius.[616]	Byzantine or another person before the emperor, the case will be judged in the imperial court.[617]

The word *reclamatio* usually means "appeal" but it could also mean a "claim".[618] In version C the word *querimonia* is used, which is used in Latin to describe "a complaint". Finally, in the corresponding Greek text the verb used is "ἐγκαλῶ" which again could mean "to claim", to "object". In light of this information, it seems likely that this passage refers not to appeals but to legal claims.[619] In other words, what is ordered here is that claims brought by Genoese against a Byzantine subject will be judged by the imperial court. Some information is also given about the issue of a guarantor in a trial:

Version Q: ...adhuc et istud preceptum est quoniam si contigerit Ianuenses offendere aliquem modo aliquo non debent iudicari ab aliqua alia gente nisi a curia domini imperatoris, presidente iudicante videlicet aliquo de consanguineis grecis imperatoris, vel de hominibus ipsius. neque tenebitur in captione faciens iniuriam ante iudicium si dederit fideiussionem.[620] si vero	Version C: ...amplius et hoc statutum est ut si accidat peccare aliquos Genuenses quomodo-cumque ut non iudicentur ab aliquo alio alterius gentis nisi ab aula imperatoris, presidentibus scilicet Romeis consaguineis aut et hominibus imperii eius, et ut non trudatur in carcerem qui peccavit ante iudicium si dederit fideiussorem. si autem non dederit fideiussiorem ut detineatur in carcere,	...also this has been ordered that, if it happens that Genoese commit an offence against someone in some way, they should not be judged by any other foreign person but only by the court of the *kyr* emperor, where one of the Byzantine relatives of the emperor or of his men presides over the court and judges [the cases]. And no one who commits an offence will be kept in custody before the trial, provided that he

615 *Cod. Dipl. Genova*, vol. II, version Q, p. 112, lines 1-9, no 50. The Greek text from the chrysobull of Manuel I Komnenos (Reg. 1498) preserved in the chrysobull of Isaac II Angelos (Reg. 1609), as explained in the introduction, is the following: "...εἰ δέ τις ἴσως βλάβη παρά τινος τούτοις ἐπισυμβαίη, ὀφείλουσιν εὑρίσκειν τὸ δίκαιον παρὰ τῆς βασιλείας ἡμῶν, καθὼς ἔστιν εἰκός· ἀλλὰ καὶ ὁπηνίκα ἐγκαλοῦσι κατά τινος Ῥωμαίου ἢ ἀλλογενοῦς ἐνώπιον τῆς βασιλείας μου, ἵνα εὑρίσκωσι δίκαιον ἐν τῇ αὐλῇ αὐτῆς…" in *MM*, vol. 3, p. 35, lines 61-6,5 no V.

616 *Cod. Dipl. Genova*, vol. II, version C, p. 112, lines 9-16, no 50.

617 This translation is based on version Q, cited in the left column.

618 See *Medieval Latin Dictionary*, p. 1158, where it is mentioned that the word *reclamatio* could mean: i. an appeal, ii. an objection, iii. claim or iv. reclamation; see also the examples of how the word is used to mean 'appeal' in medieval sources.

619 In the chrysobull for Pisa in 1111 we have seen that the word "ἔγκλησις" is translated in Latin as *reclamatio*; see the examination of Reg. 1255 in chapter III,1.2.1.2.

620 I have adopted the spelling *fideiussionem* found in the edition *Cod. Dipl. Genova.*

fideiussorem non dederit, tenebitur quidem in custodia, extraetur tamen et iudicabitur donec iudicium manifestum idest finis iudicii fuerit in ipso.[621]	emittetur autem et iudicabitur donec fiat iudicium de eo. [622]	gives a guarantor: if however, he does not give a guarantor, he will be kept in custody, but will be taken out of jail to stand trial until a clear decision has been reached, that is until the trial is over.[623]

It is made clear that if a Genoese commits an offence, he will be judged by a very high imperial court. It is interesting to note that the emperor mentions in particular that the Genoese should not be judged by a foreign judge. The fact that he mentions this could be an indication that this had occurred in the past.

At this point, it is worth mentioning that in 1155 an agreement was made between a Byzantine envoy named Demetrios Makrembolites and the city of Genoa which was not ratified by the emperor. No chrysobull followed as a result of this agreement, yet this document has served as a basis for later chrysobulls.[624]

As Day has pointed out, there is a difference between the agreement of 1155 and the later chrysobull referring to the procedure of trial for the Genoese. In the agreement of 1155 it was mentioned that if the Genoese was the plaintiff, the case would be judged in the imperial court and if the Genoese was the defendant, the consuls were to administer justice after a notification by the emperor.[625] In the first chrysobull granted to the Genoese which is examined here, it is provided that the Genoese are always to be judged in the imperial court and not by a foreign judge. Perhaps the provision about the foreign judge is included here because the agreement of 1155 allowed the

[621] *Cod. Dipl. Genova*, vol. II, version Q, p. 112, line 28 - p. 113, line 10, no 50. In addition, the corresponding text in Greek from the chrysobull of Manuel I Komnenos in 1170 (Reg. 1498), inserted in the chrysobull of Isaac II Angelos (Reg. 1609, year 1192), has as follows: "...εἰ δ' ἴσως συμβῇ πταῖσαι τινὰς Γενουίτας ὁπωσδήποτε, οὐκ ὀφείλουσιν κρίνεσθαι παρά τινος ἑτέρου ἀλλογενοῦς, εἰ μὴ παρὰ τῆς αὐλῆς τῆς βασιλείας μου, προκαθημένων δηλονότι Ῥωμαίων συγγενῶν ἢ καὶ ἀνθρώπων τῆς βασιλείας μου, καὶ ἵνα μὴ κατέχηται εἰς φυλακήν ὁ πταίσας πρὸ κρίσεως, εἴπερ δίδωσιν ἐγγυητήν· εἰ δὲ μὴ δίδωσιν ἐγγυητὴν, ἵνα κατέχηται μὲν εἰς φυλακὴν, ἐκβάλληται δὲ καὶ κρίνηται, μέχρις ἂν γένηται ἀπόφασις ἐπ' αὐτῷ..." in *MM*, vol. 3, p. 36, lines 6-12, no V.

[622] *Cod. Dipl. Genova*, vol. II, version C, p. 113, lines 1-15, no 50.

[623] This translation is based on version Q, cited in the left column.

[624] See Reg. 1402, year 1155 which refers to the mission of Makrembolites to Genoa. The agreement itself is not included as a separate act in the *Regesten* of Dölger since it is not an act of the emperor. An edition of the act can be found in *Cod. Dipl. Genova*, vol. I, pp. 327-330, no 271. See Lilie, *Handel und Politik*, pp. 84-87; Day, *Manuel*, pp. 289-301; Day, *Genoa's response*, pp. 25-26.

[625] See *Cod. Dipl. Genova*, vol. I, p. 330, lines 5-11, no 271 and Day, *Manuel*, pp. 295-6.

consuls to administer justice in one case, and the emperor wishes to make clear in his first chrysobull that only the imperial courts are competent to handle cases referring to Genoese, whether they are plaintiffs or defendants, accusers or accused.[626]

In other words, in this chrysobull the emperor reassures the Genoese that when a Genoese is brought to trial, the case will be considered a very important one and will therefore be judged by a high imperial court**.** The name of the court is not mentioned but in both Latin and Greek texts a general expression is used referring to the court: in Latin the term "curia domini imperatoris" is used and in the Greek "αὐλὴ τῆς βασιλείας μου". We are clearly informed from this chrysobull that the persons presiding over this court were people belonging to the imperial environment and relatives of the emperor. There was indeed an imperial court in the 11th and 12th centuries, known as the "αὐτοκρατορικὸν καὶ βασιλικὸν κριτήριον or βῆμα".[627] Members of the senate took part in this court, which was competent to judge cases involving relatives of the emperor, high Byzantine officials, high priests, and people who had committed a major crime or the crime of treason etc.[628] Its decisions were not subject to appeal and only the emperor himself could judge the case once again.[629] While the emperor presided over this court, he could appoint more persons as judges.[630]

It seems that this is the court referred to in this chrysobull. The fact that according to this chrysobull it is not the emperor who presides but rather people from his environment do is normal, since the emperor could hardly preside in person in all matters of that court. Most plausible is that he appointed some members of his family or selected people from his immediate surroundings to do so.

In the aforementioned passage, it is mentioned that the wrongdoer will not be imprisoned before the trial if he provides a guarantor (ἐγγυητήν). But if the wrongdoer does not provide a guarantor, he will be imprisoned; however, he will be taken out of jail to stand trial. It is interesting to see whether this procedure was also applied in 'normal' Byzantine law or if it was only reserved for foreigners. In Byzantine law of procedure, a guarantor is given in a trial to

---

626 *Cod. Dipl. Genova*, vol. I, p. 330, no 271 and Day, *Manuel*, pp. 295-6. Day speaks of "criminal Genoese" but I believe that it is not only criminal cases that are described here. The fact that a guarantor is mentioned could be an indication that we are dealing with criminal cases; however, in Byzantine law the guarantor was also used in civil cases. Moreover, Day believes that the agreement of 1169 was unratified and suggests that the first chrysobull to Genoa was granted in 1170, but I have followed the registration of Dölger on this point.

627 Goutzioukostas, *Aponomi*, pp. 259-66.; see also Zachariä, *Geschichte*, pp. 357-61.

628 Goutzioukostas, *Aponomi*, pp. 259-60.

629 Goutzioukostas, *Aponomi*, p. 260.

630 Zachariä, *Geschichte*, p. 357 and Goutzioukostas, *Aponomi*, pp. 260.

assure that the defendant in a civil case or the accused in a criminal case, will show up to the trial (ἐγγυητής ἐπὶ παραστάσει δίκης / ἐγγυητής παραστάσεως).[631]

In a *Basilica scholion* we read something that strongly echoes the provision regarding the guarantor in this chrysobull:

Σημείωσαι, ὅτι ἐπὶ τῶν ἐγκλημάτων οἱ μὴ ἔχοντες ἐγγυητὴν φυλακῇ παραδίδονται καὶ τῆς φυλακῆς ἐξαγόμενοι κρίνονται καὶ πάλιν εἰς αὐτὴν ἐμβάλλονται, καὶ ὅτι χωρὶς κελεύσεως τῶν μεγάλων ἀρχόντων οὐκ ἐμβάλλεταί τις εἰς φυλακὴν…[632]	Note, that in criminal cases the persons who do not have a guarantor are led to prison and they come out of prison and are judged, and then they are sent to the prison again, and that nobody is imprisoned without an order of the high judges...

Given that this scholion is probably one of a so-called new scholia and dates from the Middle Ages, it is important for our research.[633] According to Byzantine law in criminal cases, if the accused did not provide a guarantor, he was led to prison; but he came out of prison in order to be judged. The commentator of the *Ecloga Basilicorum* refers to a guarantor in a trial and explains:

...κελεύει ὁ νόμος, ἵνα, ἐὰν ἐνάγῃ ὁ Πέτρος κατὰ τοῦ Παύλου ἀπαιτῶν ἀπ’	...the law orders, that if Peter suits Paul asking from him a good worth 100

[631] For civil cases, see C. 9,4,6,3: “Ὁ ἐν εἱρκτῇ βληθεὶς διὰ χρηματικὸν ἐλεύθερος ἀπολυέσθω παρέχων ἐγγύας· εἰ δὲ ἀπορεῖ ἐγγυῶν, τεμνέσθω εἴσω λ' ἡμερῶν τὸ κατ’ αὐτὸν καὶ ἀπολυέσθω. ἐὰν δὲ πλείονος χρόνου τὸ πρᾶγμα δέηται, τότε ἐξωμοσίᾳ καταπιστευέσθω μέχρι πέρατος τῆς δίκης· εἰ δὲ μετὰ τὴν ἐξωμοσίαν ἀπολειφθῇ πρὸ περαιώσεως τοῦ ζητουμένου, ἐκπιπτέτω τῶν οἰκείων πραγμάτων.” [Translation from *AJC*: If a free person shall be thrown into prison on account of a civil case, he shall be released, if he furnishes sureties; if he has no sureties, the cause shall be decided within 30 days and he himself will be released. But if more time is necessary, he shall be admitted to bail till the end of the suit, by a simple quaranty for his appearance, on oath; and if he absents himself before the cause is decided, in violation of his oath, he shall lose his property.] For criminal cases, see C. 9,4,6,4: “Ἐὰν ἐλεύθερος ἐγκλήματι κατεχόμενος βληθῇ εἰς φυλακήν, ἐγγύας διδότω καὶ ἀπολυέσθω. εἰ δὲ ἀπορεῖ ἐγγυῶν, μεινάτω ἕως ἓξ μηνῶν μόνων ἐν τῇ φυλακῇ, ὧν ἐντὸς τεμνέσθω τὸ κατ’ αὐτὸν, εἰ μὴ ἄρα κεφαλικῶς ἐνάγεται.” [Translation from *AJC*: if a free person, accused of a crime, is imprisoned, he shall be released if sureties are furnished; if he has no sureties, he shall be kept in custody only six months, within which time the cause shall be decided, unless he is accused of a capital crime.]

[632] BS 3669/10-13 (sch. Pe 4 ad B. 60,35,23 = C. 9,4,6).

[633] The commentator refers to two further references for further reading on the matter: [ζήτει περὶ τοῦ τίνες δύνανται ἐμβάλλειν εἱρκτῇ καὶ βιβ. ζ'. τιτ. η'. κεφ. α'. καὶ βιβ. κα'. τιτ. α'. κεφ. μγ'.] in BS 3669/14-15 (sch. Pe 4 ad B. 60,35,23 = C. 9,4,6); these references are made to the *Basilica* which leads us to believe that the comment is a new one. [B. 7,8,1 = D. 2,4,1 (BT 357/5-6): Καλέσαι εἰς δικαστήριόν ἐστι τὸ ἐπὶ τῷ δικάσασθαι καλέσαι. And B. 21,1,43 = C. 4,20,19 (BT 1023/14-17): “Ἐὰν ἐπὶ χρηματικῇ ὑποθέσει ἀκουσίως τις ἕλκηται πρὸς μαρτυρίαν, εἰ μὲν αὐτὸς ἑκουσίως ἐγγυητὴν βούλεται δοῦναι τῆς ἑαυτοῦ παραστάσεως, διδότω. Μὴ βουλόμενος δὲ παρασχεῖν ἐγγυητὴν μὴ ἐμβαλλέσθω δεσμωτηρίῳ, ἀλλ’ ἐπομνύσθω μόνον, ὅτι παραγίνεται...”.

αὐτοῦ πρᾶγμα ρ' νομισμάτων ἄξιον, ὁ δὲ ἐναγόμενος Παῦλος οὐκ ἔχει ἀκίνητον, οἷον ὀσπήτιον ἢ κτῆμα, ἀναγκάζῃ αὐτὸν Παῦλον ὁ δικαστὴς, ἵνα δώσει ἀσφάλειαν. Ἡ δὲ ἀσφάλεια, ἣν ἀπαιτοῦσι τὸν ἐναγόμενον Παῦλον, τοιαύτη ἐστί· δίδωσι γὰρ ἐγγυητὴν ὁ Παῦλος εὔπορον καὶ ἀξιόλογον ἐγγυώμενον ὑπὲρ αὐτοῦ οὕτως· "ἐγὼ ὁ δεῖνα, ὁ Ἰωάννης τυχὸν, ἐγγυῶμαι τὸν Παῦλον, ὅτι ἐκ παντός, ἵνα παρίσταται εἰς τὸ δικαστήριον· εἰ δὲ φύγῃ ἀπὸ τοῦ δικαστηρίου ὁ Παῦλος, ἵνα δώσω ἐγὼ ὁ Ἰωάννης, ὅσον ζητεῖ ποσὸν ὁ Πέτρος ἀπὸ τοῦ Παύλου."[634]

nomismata and the defendant Paul has not any immovable property, such as a house or a field, the judge forces Paul to give a guarantee. The guarantee which is required from the defendant Paul is of the following kind: Paul will have to give as a guarantor someone wealthy and important, who will guarantee for him as follows: "I, X, for example John, guarantee completely that Paul will show up in the court; if Paul does not come to the court, then I, John will give the amount that Peter is asking from Paul".

The guarantor is therefore also used in civil cases to ensure that the defendant will show up to the trial (ἐγγυητὴς ἐπὶ παραστάσει δίκης). Hence, the provision in the chrysobull of Manuel I Komnenos in 1169 about the defendant needing a guarantor to avoid imprisonment until the trial is heard corresponds to Byzantine law. In this respect, it seems that the Genoese are subject to Byzantine law.[635]

This chrysobull does not provide further information about the guarantor of the Genoese; for example, whether or not he had to be a Byzantine citizen and what his role consisted of exactly. According to the Byzantine legal texts examined here, the guarantor must have guaranteed that the defendant or accused would show up to the trial, and therefore, it was not necessary to keep him in prison. If he did not show up, the guarantor was probably obliged to pay a fine; however, in this act, no reference is made to the fine that the guarantor would have to pay. Finally, this is the first time that we come across information in our acts regarding the procedure of a guarantor in a trial.

It is worth mentioning that a similar provision is included in a privilege charter by Conrad of Montferrat to Genoa in 1190. For a better comparison of these provisions, parallel passages are quoted below:

Chrysobull of Manuel I Komnenos in 1169 (Reg. 1488), version Q:	Privilege charter of Conrad of Montferrat in 1190:
...neque tenebitur in captione faciens iniuriam ante iudicium si dederit fideiussionem. si vero fideiussorem non dederit, tenebitur quidem in custodia,	…et quod nullus Ianuensis vel Ianuensis dictus qualibet occasione vel offensa possit nec debeat in carcere mitti nec quovis modo constringi ab aliquo si

[634] *Ecloga Basilicorum*, p. 298, lines 21-28 (comment on B. 7,12,1 = D. 2,5,1).
[635] See, however, the comparison with the privilege charter by Conrad of Montferrat in 1190 to Genoa which follows.
[636] *Cod. Dipl. Genova*, vol. II, version Q, p. 113, lines 3-10, no 50.

extraetur tamen et iudicabitur donec iudicium manifestum idest finis iudicii fuerit in ipso.[636]

pleium aut fideiussorem prestare voluerit aut potuerit in hoc unde calumpniatus fuerit.[637]

In the chrysobull of Manuel I Komnenos from 1169 the following provision is included, which raises many questions as to its interpretation:

Version Q:

...preterea expletis quinque annis mittetur camerarius domini imperatoris ad vindictam faciendam Ianuensibus, si ipsi proclamationem domini imperatoris fecerint.[638]

Version C:

...ad hec mittetur post decursum .v. annorum vestiarita ad iudicandum Genuenses si ipsi conquesti fuerint domino imperatori.[639]

...moreover, after five years have been completed, an officer from the *kyr* emperor is sent to deal with the disputes of the Genoese, if they lodge a legal complaint against the *kyr* emperor.[640]

The term *proclamatio* used in the Latin text in version Q could also mean "appeal",[641] but based on the general use of the word in Medieval Latin, in this passage it means nothing less than legal complaint, a claim;[642] This argument is strengthened by the fact that in version C the expression "conquesti fuerint" is used, which means "to complain". The identitification and the actual role of the Byzantine official here remains unclear since in the Latin text no specific Byzantine official is mentioned[643] and nothing is described about how he is going to treat these complaints.

The Greek text of the chrysobull of Manuel I Komnenos issued in 1170, which corresponds to this Latin passage, is as follows:

...σύν τούτοις, ἵνα ἀποστέλληται μετὰ παραδρομήν πέντε ἐνιαυτῶν βεστιαρίτης τῆς βασιλείας μου εἰς ἐκδίκησιν τῶν Γενουιτῶν, κἂν οἱ τοιοῦτοι ἐγκαλῶσι τῇ βασιλεία μου…[644]

…furthermore, a *bestiarites* will be sent after five years to deal with the disputes of the Genoese, even if they lodge a claim to my Majesty.

In the Greek text, the expression "ἐγκαλῶσι τῇ βασιλεία μου" is used which supports the argument that we are not dealing with an appeal here. The word "βεστιαρίτης" has been translated in Latin in the first version (Q) as

[637] See *Cod. Dipl. Genova*, vol. II, p. 370, lines 18-21, no 194 and Jacoby, *Conrad*, p. 208.
[638] *Cod. Dipl. Genova*, vol. II, version Q, p. 113, lines 10-15, no 50.
[639] *Cod. Dipl. Genova*, vol. II, version C, p. 113, lines 15-19, no 50.
[640] This translation is based on version Q, cited in the left column.
[641] Lewis and Short, *Dictionary*, p. 1452.
[642] According to the *Medieval Latin Dictionary*, vol. II, p. 207 the word *proclamatio* could mean a "complaint with a general meaning or a legal complaint".
[643] Instead, the general terms *camerarius* and *vestiarita* are included.
[644] *MM*, vol. 3, p. 36, lines 12-15, no V.

camerarius, a word that corresponds to an office in the administration system of the Italian city-republics in the 12th century.[645] This information provides some hints as to who the translator of the original Greek documents could be. For example, since the word *camerarius* corresponds to an office of the Italian city-republics, the translator of this version was probably a Latin native speaker.[646]

In any case, what is clear from all of these versions is that a Byzantine officer is sent (where, we do not know) by the emperor every five years in order to deal with disputes of the Genoese against the emperor.[647] Finally, a provision is included in the chrysobull of 1169 that refers to the rights the Genoese have in Syria:

Et non impedient unquam Ianuenses dominum imperatorem et heredes vel successores eius ad conquirendas terras aliquas preter ius quod habent in terra Surie sive ex bello sive ex emptione seu aliquo alio modo. Si vero et in his ex parte domini imperatoris custodietur Ianuensibus iusticia eorum neque in his debent impedire dominum imperatorem facere in his quicquid voluerit.[648]

…et non impedient aliquando Genuenses dominum imperatorem et heredes et successores eius in possessionem alicuius regionis, excepto iure quod habent in regione Syrie, sive obtinuerint bello, sive emptione vel aliter quocumque modo. Si autem et in istis servabitur ex parte imperatoris Genuensibus ius eorum, neque in istis impedietur imperatorem quin faciat quodcumque voluerit in ipsis regionibus.[649]

And the Genoese will not ever hinder the *kyr* emperor and His heirs or successors from conquering other lands except from the rights that they have in the land of Syria, either by war or by purchase or by some other way. If, however, even in these matters the rights of the Genoese are protected by the *kyr* emperor, then they must not hinder him [the emperor] to do there whatever he wishes.[650]

[645] A *camerarius* was a financial official. See Waley, *Italian*, p. 45.

[646] On the issue of the translation of imperial documents from this period, see Gastgeber, *Übersetzungsabteilung*; see also Chapter I,3.

[647] See Day, *Genoa's response*, p. 26 and Day, *Manuel*, p. 297.

[648] *Cod. Dipl. Genova*, vol. II, version Q, p. 109, lines 5-18, no 50. This passage corresponds to the following abstract in Greek from the oath of Amico de Murta preserved in a later chrysobull of Isaac II Angelos to Genoa (Reg. 1609): "...ὅτι ἀπὸ τοῦ νῦν καὶ εἰς τὸ διηνεκὲς οὐδέποτε ἵνα γένωνται οἱ Γενουΐται ἐν βουλῇ ἢ ἐν ἔργῳ δι' ἑαυτῶν ἢ δι' ἑτέρων τινῶν, ἢ μετὰ ἐστεμμένων εἴτε καὶ μὴ τοιούτων, ἵνα ὁ κύριος βασιλεὺς ἢ οἱ κληρονόμοι αὐτοῦ καὶ διάδοχοι ἀπολέσωσι χώραν ἢ τιμήν, ἀφ' ὧν ἔχει σήμερον ἢ ὧν μέλλει ἐπικτήσασθαι, ἄνευ τοῦ ὅ τι ἐὰν κρατήσῃ ἐκ τῶν χωρῶν τῆς Συρίας, ἅς ἔχομεν ἢ κρατοῦμεν ἢ ἐν αἷς ἔχομεν δίκαιον εἴτε διὰ πολέμου εἴτε διὰ προσελεύσεως ἢ διὰ χαρίσματος ἢ διὰ ἀγορᾶς ἢ δι' ἀνταλλαγῆς, ἣν ἐποιήσαμεν, χώραν ἀντὶ χώρας λαβόντες…" in *MM*, vol. 3, p. 34, lines 7-15, no V; the Greek text is more extensive than the Latin one.

[649] *Cod. Dipl. Genova*, vol. II, version C, p. 109, lines 7-21, no 50.

[650] This translation is based on version Q, quoted in the left column.

At first sight, this excerpt does not seem to make sense. The reason for that is because it deals with issues concerning Syria. This was a complicated matter since it was uncertain at that time who ruled over Syria.[651] In any case, it seems that both parties have reached a kind of consensus regarding their interests in Syria. The emperor will respect the Genoese rights there but the latter will also not hinder him from taking action there.[652]

[651] In general on this, see Lilie, *Byzantium and the Crusader States*, especially pp. 171-174.
[652] See Lilie, *Byzantium and the Crusader States*, pp. 171-174.

1.2.3 Shipwreck provisions

Furthermore, it is ordered in the chrysobull of Manuel I Komnenos in 1169 that:

...Et si aliqua navis Ianuensium a quacumque parte venerit, naufragium passa fuerit in Romaniam et contigerit de rebus eius auferri eis ab aliquo, fiet preceptum imperii eius vindicandi et recuperandi res amissas.[653]	...if some Genoese ship passes from some part and is wrecked within Romania, and it happens that goods are removed by someone, then an imperial order follows that the lost goods will be recovered and regained.

A privileged position is established here for the Genoese regarding goods of theirs that have been stolen from their ships wrecked within the empire. The emperor guarantees the recovery of their goods.

[653] *Cod. Dipl. Genova*, vol. II, version Q, p. 112, lines 22-28, no 50. See also the chrysobull of Manuel I Komnenos in 1170 (Reg. 1498), which has been preserved in Greek and has the same provision referring to shipwreck and salvage: "καὶ ἐὰν πλοῖον Γενουιτικὸν ἀφ' οἱουδήτινος τόπου ἐρχόμενον εἰς Ῥωμανίαν κινδυνεύσῃ καὶ συμβῇ τινὰ τῶν ἐν αὐτῷ πραγμάτων ἀφαιρεθῆναι ὑπό τινων, ἵνα γίνηται πρὸς ταῦτα τῆς βασιλείας μου ἐκδίκησις καὶ ἐπανάσωσις τῶν τοιούτων πραγμάτων…" in *MM*, vol. 3, p. 36, lines 2-6, no V.

2. The first chrysobull of Manuel I Komnenos in 1170 (Reg. 1497)

2.1 Introduction

One year after his first chrysobull to Genoa in 1169, emperor Manuel I Komnenos issued another privilege act for Genoa. It is a chrysobull *sigilion*, preserved only in its Latin translation, and kept in the state archives of Genoa.[654] The emperor begins by referring to a former chrysobull which was made with the Genoese envoy, Amico de Murta[655] and confirms the former grants of the Genoese including an area in Constantinople and an amount of money. It is mentioned that the majority of the Genoese swear an oath and confirm that no Genoese must act against the people of Romania.

2.2 Legal issues

2.2.1 Granting immovable property

By this imperial act, the Genoese receive a merchant quarter (*embolon*) and a landing-stage (*scala*):

...sancit igitur per presentis auree bulle sigillum ut ipsi possideant huiusmodi embolum et scalam in magna civitate sicut illis tradita sunt vice illorum que data fuerant eis in transmare partibus.[656]	...it is ordered by the present chrysobull *sigilion* that they receive such a merchant quarter and a landing area in Constantinople so that these are delivered to them instead of the things that had been given to them in the parts at the other side of the sea.

In the edition of Cesare Imperiale Di Sant'Angelo, which I have used for the acts of Genoa, directly after this first chrysobull of Manuel I Komnenos, a text is included describing the area that is granted to the Genoese.[657] This reminds us of former acts that describe in detail the area granted to the Italians by the emperor.[658] In the beginning of this act, reference is made to an order of the emperor (*praeceptum*) to the prefect of the city (mentioned here as Basil Kamateros) who was made responsible for recording the actual borders of the Genoese area of Koparion in Constantinople. A description of the granted area is then included. The delivery of these areas was

654 Archivio di Stato Genova, mazzo I, n. 53, see Dölger, *Regesten*, pp. 258-59.
655 Probably the chrysobull from 1169, Reg. 1488.
656 *Cod. Dipl. Genova*, vol. II, p. 118, lines 15-18, no 52.
657 *Cod. Dipl. Genova*, vol. II, p. 119, line 14 – p. 121, line 12, no 52; see also chapter V,2.3.
658 The so-called *praktika paradoseos*.

carried out according to an act of delivery, which in this instance is referred to as a *pragmaticum*.[659] At the end of the document, the names of two people who must be the persons signing this act are mentioned: Tribunus Staurakius Oglukas and Tribunus John Tuanza.[660] In the collection of the Byzantine imperial acts by Dölger, we are informed that the emperor had issued a decree (*praeceptum*) addressed to the prefect of the city Basil Kamateros ordering him to proceed in pointing out the borders of the Genoese district Koparion in Constantinople.[661] Dölger mentions that there are indirect references about this decree in an act (*praktikon*) that was drawn up by Staurakios Glykas and Anzas in 1170.[662] The act that is inserted in our edition seems to be the act drawn up by these three Byzantine officials.

[659] "...his ita inventis et traditis presens pragmaticum expositum est mense atque indictione prescriptis" in *Cod. Dipl. Genova*, vol. II, p. 121, lines 3-4, no 52. The term *praktikon* is usually used in Latin to describe the act of delivery in the acts that we have examined thus far. The word *pragmaticum* could have been a mistake of the translator or an error made in the copy.

[660] *Cod. Dipl. Genova*, vol. II, p. 121, no 52. About these persons and the word *tribunus*, see Gastgeber, Übersetzungsabteilung, vol. 3, no 21, pp. 141-142, commentary, lines 68-69. The name Oglukas must derive from the Greek name ὁ Γλυκᾶς in nominatieve, and the name Tuanza must derive from the Greek name Ἀνζᾶς in genitieve, namely τοῦ Ἀνζᾶ. The same had occurred with the name Epiphanios Glykas (Tuglikas), see chapter II,4.3.1.

[661] See Dölger, *Regesten*, p. 258 (Reg. 1495).

[662] Dölger, *Regesten*, p. 258 (Reg. 1495).

2.2.2 Conflicts between Genoese and Byzantine subjects

The provision that follows indicates that the emperor was concerned about the conflicts between the Genoese living within his empire and other subjects of his empire:

...veruntamen non licebit qui in magna civitate seu in aliis regionibus imperii habitant, Genuensibus cum meditacione et consilio malo accipere arma adversus aliquos homines Romanie. quod si forte acciderit quamlibet pugnam ab aliquibus contra eos exurgere ut ipsi compellantur accipere arma contra illos cessabunt ab huiusmodi impetu diffinitione imperii mei aut hominum ipsius. et non poterunt his aut illis associari et vindicare quoscumque voluerint, sed cohiberi sola iussione imperii et hominum ipsius et facere per omnia que mandabuntur ab ipsis.[663]

...however, it is not allowed for the Genoese that live in the great city [Constantinople] or in other regions of my Majesty to take arms on purpose and with bad intention against any people of Romania. And if it happens that a conflict arises by others against them and they feel compelled to take up arms against them, then the Genoese will refrain from this urge by command of my Majesty or by His men; and they will not be able to associate with this or that party and punish whoever they want but be constrained by a mere order of the emperor and of His men and do whatever will be ordered by them.

This explicit concern of the emperor to forbid the Genoese from taking part in a fight within his empire is probably an indication that conflicts between the Genoese (or perhaps other Italians) and subjects of his empire had already occurred.

[663] *Cod. Dipl. Genova*, vol. II, p. 119, lines 1-9, no 52.

3. The second chrysobull of Manuel I Komnenos in 1170 (Reg. 1498)

3.1 Introduction

Shortly after the first chrysobull of 1170,[664] emperor Manuel I Komnenos issued another chrysobull to Genoa, the text of which has been preserved within the chrysobull of Isaac II Angelos for Genoa issued in 1192.[665] This latter chrysobull has been preserved both in Greek and in a Latin translation; both Greek and Latin documents can be found today in the state archives of Genoa.[666] The emperor begins the act of 1170 by referring to the envoy (Amico de Murta) sent by the Genoese to negotiate and conclude an agreement with the Byzantine emperor. We are informed by this imperial act that an agreement was made[667] and confirmed by oath by the Genoese envoy. Areas in Constantinople as well as sums of money were granted to the Genoese; regulations were also made about the tax of *kommerkion*. The legal provisions within the chrysobull refer to: i. issues of justice for the Genoese subjects, such as competent courts, legal co-operation between Genoa and Byzantium and the guarantor in a trial, and to ii. shipwreck and salvage provisions. All the legal provisions of this chrysobull are identical to those inserted in the chrysobull of 1169,[668] which is preserved only in Latin. In the paragraphs that follow I have only provided a brief description of these provisions, as the analysis of similar provisions in the first chrysobull of Manuel I Komnenos issued in 1169 applies here as well.[669]

[664] Reg. 1497.
[665] Reg. 1609, year 1169.
[666] Dölger, *Regesten*, p. 309.
[667] This must be the chrysobull from year 1169, Reg. 1488.
[668] Reg. 1488.
[669] See the examination of Reg. 1488 in chapter IV,1.2.

3.2 Legal Issues

3.2.1 Justice

The emperor orders which court will be competent in cases where the Genoese bring a complaint:

εἰ δέ τις ἴσως βλάβη παρά τινος τούτοις ἐπισυμβαίῃ, ὀφείλουσιν εὑρίσκειν τὸ δίκαιον παρὰ τῆς βασιλείας ἡμῶν, καθὼς ἔστιν εἰκός· ἀλλὰ καὶ ὁπηνίκα ἐγκαλοῦσι κατὰ τινος Ῥωμαίου ἢ ἀλλογενοῦς ἐνώπιον τῆς βασιλείας μου, ἵνα εὑρίσκωσι δίκαιον ἐν τῇ αὐλῇ αὐτῆς.[670]	si vero aliqua fortasse iniuria a quoquam his contigerit, debent nancisci iustitiam a curia nostra, sicut par est; sed quandocumque poscant [actione iuris][671] adversus aliquem Romanum vel alienigenam coram maiestate mea, inveniant iustitiam in curia ipsius.[672]	And if some damage is done to them, they will find justice by our Majesty as is proper. And also if a claim is filed against some Byzantine or a foreigner before my Majesty, then the case will be judged in His court.[673]

In the lines above, the provision made in the first chrysobull for Genoa[674] is repeated. Added to it is the following:

...εἰ δ' ἴσως συμβῇ πταῖσαι τινὰς Γενουίτας ὁπωσδήποτε, οὐκ ὀφείλουσιν κρίνεσθαι παρά τινος ἑτέρου ἀλλογενοῦς, εἰ μὴ παρὰ τῆς αὐλῆς τῆς βασιλείας μου, προκαθημένων δηλονότι Ῥωμαίων συγγενῶν ἢ καὶ ἀνθρώπων τῆς βασιλείας μου.[675]	...si vero contigerit ut delinquant Genuenses aliqui quoquomodo, non debent iudicari ab aliquo alio alienigena, nisi a curia imperii mei, praesidentibus scilicet Romanis cognatis vel hominibus maiestatis meae.[676]	...if it happens that some Genoese harm by some way, they should not be judged by some other foreign person but only by the court of my Majesty, where obviously some of the Byzantine relatives of the emperors or of his men preside the court and judge (the cases).[677]

[670] *MM*, vol. 3, p. 35, lines 61-65, no V.
[671] The [actione iuris] in brackets is probably an addition made by the editors.
[672] *Cod. Dipl. Genova*, vol. III, p. 61, lines 16-20, no 21.
[673] This translation is based on the Greek text.
[674] Reg. 1488, year 1169.
[675] *MM*, vol. 3, p. 36, lines 6-9, no V.
[676] *Cod. Dipl. Genova*, vol. III, p. 61, lines 30-33, no 21.
[677] This translation is based on the Greek text as are all the following translations that have been included here.

Once again this provision reminds us of the provision that we have seen in the earlier document by the same emperor, Manuel I Komnenos.[678] The second chrysobull of Manuel I Komnenos in 1170 (Reg. 1498) includes more provisions that are similar to those inserted in the first preserved chrysobull for Genoa[679]; like the first preserved chrysobull, this chrysobull also makes reference to imprisonment and the use of a guarantor in a trial, as well as the execution of a sentence:

...καὶ ἵνα μὴ κατέχηται εἰς φυλακὴν ὁ πταίσας πρὸ κρίσεως, εἴπερ δίδωσιν ἐγγυητήν· εἰ δὲ μὴ δίδωσιν ἐγγυητὴν, ἵνα κατέχηται μὲν εἰς φυλακήν, ἐκβάλληται δὲ καὶ κρίνηται, μέχρις ἂν γένηται ἀπόφασις ἐπ' αὐτῷ. σὺν τούτοις, ἵνα ἀποστέλληται μετὰ παραδρομὴν πέντε ἐνιαυτῶν βεστιαρίτης τῆς βασιλείας μου εἰς ἐκδίκησιν τῶν Γενουιτῶν, κἂν οἱ τοιοῦτοι ἐγκαλῶσι τῇ βασιλείᾳ μου.[680]	...et non detineatur in custodia reus ante iudicium si dederit fideiussorem. si vero non dederit fideiussorem, detineatur quidem in custodia, educatur vero et iudicetur donec fiat sententia super ipsum. interea delegetur intra cursum quinque annorum vestiarita maiestatis meae in vindictam Genuensium, quamvis hi appellent ad maiestatem meam.[681]	...and no one is imprisoned before the trial, provided that he gives a guarantor: if however, he does not give a guarantor, he has to be kept in custody but he will go out and be judged until there is a court decision. Moreover, after five years have been completed a *bestiarites* of my Majesty is sent by me to deal with the disputes of the Genoese, even if they lodge a claim before my Majesty.

With regard to legal terminology, the verb "ἐγκαλῶ" is used in the Greek text of this act and is translated into Latin as the verb *appello***.** The verb *appello* could mean primarily "to appeal" or "to lodge a complaint"; here, however, the latter definition in the sense of a legal claim seems more likely.[682]

678 Reg. 1488, year 1169.
679 Reg. 1488, year 1169.
680 *MM*, vol. 3, p. 36, lines 9-15, no V.
681 *Cod. Dipl. Genova*, vol. III, p. 61, line 33 – p. 62, line 2, no 21. There is a contradiction in the Greek and Latin text here. In the Greek text it is mentioned that the *bestiarites* will be sent after five years have passed (μετὰ παραδρομὴν πέντε ἐνιαυτῶν), whereas in the Latin text it is mentioned that the *bestiarites* will be sent within the course of five years (intra cursum quinque annorum),which means up to five years. Since the original document was in Greek, I have relied upon the Greek text here for the translation.
682 See *Medieval Latin Dictionary*, vol. I, p. 68 [appellare: 1. to appeal to a judge (even in the first instance), 2. to lodge a complaint, to bring an accusation against a person].

3.2.2 Shipwreck and salvage provisions

The shipwreck issues regulated in this chrysobull are also the same as those provided in the chrysobull of 1169:[683]

...καὶ ἐὰν πλοῖον Γενουιτικὸν ἀφ' οἱουδήτινος τόπου ἐρχόμενον εἰς Ῥωμανίαν κινδυνεύσῃ καὶ συμβῇ τινὰ τῶν ἐν αὐτῷ πραγμάτων ἀφαιρεθῆναι ὑπό τινων, ἵνα γίνηται πρὸς ταῦτα τῆς βασιλείας μου ἐκδίκησις καὶ ἐπανάσωσις τῶν τοιούτων πραγμάτων.[684]

Et si navigium Genuense a quocumque loco veniens in Romaniam periclitetur et contingerit ut aliquid ex iis quae in ipso sunt ablatum fuerit a quocumque, fiat de his vindicta a maiestate mea et restauratio huiusmodi rerum.[685]

...and if a Genoese ship coming from some part to Romania is in danger and it happens that goods are removed by someone, then there will be recovery and restitution of these goods by my Majesty.

[683] See the examination of Reg. 1488 in chapter IV,1.2.
[684] *MM*, vol. 3, p. 36, lines 2-6, no V.
[685] *Nuova Seria*, p. 432, lines 32-36, no IX.

The Angelos dynasty

4. The chrysobull of Isaac II Angelos in 1192 (Reg. 1609)

4.1 Introduction

In 1192 Isaac II Angelos issued a lengthy chrysobull,[686] preserved both in the original Greek and in a copy of the Latin translation. All manuscripts are stored in the state archives of Genoa.[687] The emperor acknowledges that during the hostile acts that took place during the reign of Andronikos, there was damage done to both sides.[688] The envoys refer to earlier requests which the Genoese had made to the Byzantines and consist, *inter alia*, of compensation for the damages caused during the reign of Andronikos and for taxes that they had paid.[689] The oath of Amico de Murta is inserted,[690] as well as the chrysobull of Manuel I Komnenos from 1170.[691] The legal issues addressed in the chrysobull of 1192 could be divided in two main categories: i. matters dealing with the making of the treaty and false representation and ii. issues dealing with the granting of immovable property. There are also issues concerning the justice for the Genoese, as included in the oath of Amico de Murta and the chrysobull of Manuel I Komnenos which are inserted here, but these issues have been dealt with in previous sections.[692]

---

[686] Before this chrysobull the emperor also issued two letters: the first in 1188 (Reg. 1582), addressed to Baldovino (Balduino) Guercio of Genoa by which the emperor confirmed that he received his letter and stated that the Genoese will 'enjoy freedom' if they do not raise new burdening requests, see *MM*, vol. 3, p. 1-2, no I for the Greek text and *Nuova Seria*, pp. 407-408, no VIII for the Latin text. This letter is not published in the edition of *Cod. Dipl. Genova*. In the second letter issued in 1191 (Reg. 1606), addressed to the *podestà* Manegoldo of Brescia and the consuls of Genoa, the emperor confirmed that he received their letter which was delivered by their envoy Tanto. The emperor makes clear that he is willing to make an agreement with Genoa; however, Tanto was not in a position to conclude an agreement on behalf of the Genoese because he lacked the corresponding letter of delegation and therefore, the emperor requests the Genoese to send competent envoys in order to conclude an agreement; see *MM*, vol. 3, pp. 2-3, no II for the Greek text and *Cod. Dipl. Genova*, vol. III, pp. 24-25, no 9 for the Latin text. For the envoy Tanto, see also Gastgeber, *Übersetzungsabteilung*; vol. 3, no 31, pp. 220-221, commentary, line 2.

[687] For information about the document and its editions, see Dölger, *Regesten*, pp. 308-310.

[688] During the enthronment of Andronikos a massacre of Latin people occured in Constantinople, see Ostrogorsky, *History*, p. 396.

[689] For all the requests of the Genoese and the grants of the emperor in this chrysobull, see the summary in Dölger, *Regesten*, pp. 308-310; see Lilie, *Handel und Politik*, pp. 100-102.

[690] The oath is inserted but not word for word, as I have previously mentioned in examining the chrysobull of 1169, Reg. 1488 in chapter IV,1.1.

[691] Reg. 1498.

[692] See the examination of Reg. 1488 in chapter IV,1.2.2 and Reg. 1498 in chapter IV,3.2.1 respectively.

4.2 Legal Issues

4.2.1 Making the treaty and false representation

The two Genoese envoys, Gulielmo Tornello[693] and Guido Spinula[694] were instructed (ἐνδεδομένον ἔχοντες[695] = *mandatum habentes*[696]) to reach an agreement with the emperor (συμφωνῆσαι μετὰ τῆς βασιλείας μου καὶ τῆς Ῥωμανίας[697] = *paciscendi cum maiestate mea et Romania*[698]). It is mentioned that they were sent on behalf of the *podestà*, the consuls and the people of Genoa.[699] The emperor mentions that the envoys have agreed to what is declared and have signed and confirmed it by a corporal oath, which is inserted as a complete text in this chrysobull.[700] The procedure here is the same as in other acts already examined: the envoys sign the agreement and promise by oath that the provisions will be observed by their city. The envoys act as representatives of their city and are in a position to conclude a treaty that will bind their city.

At the end of the document, the emperor confirms that he will observe what is written under the condition that the *podestà* and the authorities of Genoa will accept what is agreed and promised by the envoys, and will confirm it by promising a corporal oath.[701] I will return to the matter of the corporal

---

693 For information on Gulielmo Tornello, see Gastgeber, *Übersetzungsabteilung*; vol. 3, no 34, p. 280, commentary, line 3.

694 For Guido Spinola, see Gastgeber, *Übersetzungsabteilung*; vol. 3, no 34, p. 280, commentary, line 3.

695 *MM*, vol. 3, p. 26, line 8, no V.

696 *Cod. Dipl. Genova*, vol. III, p. 52, lines 18-19, no 21.

697 *MM*, vol. 3, p. 26, lines 8-9, no V.

698 *Cod. Dipl. Genova*, vol. III, p. 52, line 19, no 21.

699 "...ἀποσταλέντες παρὰ τοῦ ἐξουσιαστοῦ τοῦ κάστρου Γενούας τοῦ Μανετόλδου δὲ Βρέσας καὶ τῶν κονσούλων καὶ συμβούλων καὶ τοῦ λοιποῦ πληρώματος τοῦ κάστρου καὶ τῆς χώρας Γενούας" in *MM*, vol. 3, p. 26, lines 17-20, no V; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 52, line 27 – p. 53, line 1, no 21: "...missi a potestate civitatis Genuae Manegoldo de Brixia et consulibus et consiliariis et reliquo populo civitatis et regionis Genuae...".

700 "...καὶ συνηρέσθησαν εἰς τὰ δηλούμενα ἐν τῷ οἰκειοχείρως παρ' αὐτῶν ὑπογραφέντι ἐγγράφῳ τῷ καὶ σωματικῷ ὅρκῳ παρ' αὐτῶν βεβαιωθέντι καὶ οὕτως αὐτολεξεὶ ἔχοντι…" (the oath follows) in *MM*, vol. 3, p. 26 line 13 -15, no V; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 52, lines 23 -.25, no 21: "...et convenerunt in ea quae declarantur in scriptura ab ipsis manu propria subscripta et corporali iuramento ab ipsis firmata et sic de verbo ad verbum se habente:..".

701 "Συντηρηθήσονται τοίνυν τὰ ἀναγεγραμμένα βέβαια παρὰ τῆς βασιλείας μου [..], εἴπερ καὶ ὁ ὢν ἐξουσιαστὴς ἐν τῷ κάστρῳ Γενούας καὶ [..] παραδεξάμενοι τὰ παρά τῶν ἀναγεγραμμένων ἀποκρισαρίων αὐτῶν συμφωνηθέντα καὶ ἐπομοθέντα πρὸς τὴν βασιλείαν μου καὶ τοὺς κληρονόμους καὶ διαδόχους αὐτῆς καὶ πρὸς αὐτὴν τὴν Ῥωμανίαν, συμφωνήσουσι ταῦτα καὶ σωματικῷ διαβεβαιώσονται ὅρκῳ καὶ ἔγγραφον δὲ τούτων περιεκτικὸν…" in *MM*, vol. 3, p. 36, lines 27- 35, no V and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 62, lines 13-19,

oath in chapter V, where I will investigate common legal issues in the examined acts.[702]

In the edition used here, there is another interesting document related to this chrysobull: the act by which the consuls of the city ratify the treaty made with the emperor and swear an oath to observe its provisions.[703] The oath is taken in a public assembly in the church of Saint Laurentius in the presence of the Byzantine envoy Nikephoros Pepagomenos[704] and the interpreter Gerardo.[705] Moreover, in this chrysobull there is also some interesting information about false embassy, namely a recorded instance of the false representation made by a Byzantine envoy.

Here is the corresponding passage, which is part of the oath of the two Genoese envoys:

...καὶ πρῶτα μὲν ἐζητήσαμεν γενέσθαι τῇ χώρᾳ ἡμῶν τὰ διὰ τοῦ ἀποκρισαρίου τῆς ἁγίας αὐτοῦ βασιλείας τοῦ Μεσοποταμίτου ἐκείνου Κωνσταντίνου συμφωνηθέντα· ὅτι δὲ εἰς τοῦτο οὐδόλως παρεδέχθημεν διὰ τὸ παραπρεσβείας ἐκεῖνον γραφῆναι καὶ διὰ τοῦτο καὶ τὸν σὺν ἐκείνῳ ἐλθόντα ἀποκρισάριον τῆς χώρας ὑμῶν[706] τὸν Συμεὼν Πουφέρην ἄπρακτον ὑποστρέψαι, δευτέρως ἐζητήσαμεν ἀποθεραπευθῆναι ἡμῖν τὰς ζημίας, ἃς ἐν τῷ καιρῷ τῆς εἰς τὴν Μεγαλόπολιν εἰσελεύσεως τοῦ δηλωθέντος τυράννου ἐκείνου Ἀνδρονίκου ὑπέστημεν…[707]

...et primum quidem quaesivimus fieri regioni nostrae ea quae per legatum sacrae ipsius maiestatis Mesopotamitem illum Constantinum fuerant concinnata: quoniam vero id nullimode accepimus eo quod ille de falsa legatione arguentur et propterae etiam qui cum illo convenerat legatus regionis nostrae Simon Buferius re infecta reverteretur. secundo, quaesivimus ut compensarentur nobis damna quae tempore ingressus Constantinopolim

...and first we asked that our city would receive what was agreed by that envoy of his holy Majesty, the late Constantine Mesopotamites, but since we did not receive it because he was accused of false representation and therefore the envoy of our land, who had come with Simon Buferio returned without anything, we asked again for the compensation for the damage, the one that we had suffered in the great city [Constantinople] during the reign of the

no 21: "...Servabuntur igitur descripta omnia firma a maiestate mea [...] si potestas in civitate et regione Genuae et [...] accipientes quae a dictis legati ipsorum concinnata et iurata fuerunt erga maiestatem meam et heredes et successores eius et erga ipsam Romaniam, approbabunt haec et corporali firmabunt iuramento et scriptum horum continens...".

[702] See chapter V,5.

[703] *Cod. Dipl. Genova*, vol. III, pp. 75- 78, no 24.

[704] For Nikephoros Pepagomenos, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 34, p. 281, commentary, lines 10-11.

[705] On this interpreter and his translations, see Gastgeber, *Übersetzungsabteilung*, vol. 2, pp. 350-381 and vol. 3, no 34, p. 281, commentary, line 11.

[706] This is probably mistaken for "ἡμῶν".

[707] *MM*, vol. 3, p. 27, lines 1-9, no V.

praedicti tyranni illius Andronici subieramus…[708]	mentioned tyrant, the late Andronikos…[709]

From this passage we learn that there was something like an agreement between a Byzantine envoy, named Constantine Mesopotamites, and the city of Genoa but it never came into force because the envoy was accused of false embassy. There are indirect references to a mission made by the Byzantine envoy Constantine Mesopotamites to Genoa in order to negotiate a treaty with the Genoese.[710] The year of this mission is not known but it is thought to have taken place between December 1188 and April of 1192. It seems that this agreement has not been preserved; at least I have not been able to trace it in the works that I have examined.[711] In any case, it is evident from this chrysobull that the Byzantine envoy was accused of false embassy and therefore, his agreements with Genoa were not valid. The reasons for false embassy are not clear, namely whether the Byzantine envoy was in a position to negotiate and conclude a treaty on behalf of the Byzantines with Genoa, or whether he had exceeded his mandate.[712]

Since the agreement with the Byzantine envoy was not ratified by the emperor and was not valid, the Genoese asked for compensation for the damage that they had suffered at the time of Andronikos. But the corresponding Byzantine official whom they addressed, namely the *logothetes tou dromou*, brought objections to their requests retorting that Genoa had also caused damage to Byzantium and should pay compensation for that damage.[713] The emperor decided to grant amnesty and to overlook the objections of the *logothetes tou dromou*; but the emperor requested in return that the Genoese on their part grant amnesty for damages inflicted during the reign of Andronikos.[714] In their first oath, the envoys indeed reassure the emperor that

[708] *Cod. Dipl. Genova*, vol. III, p. 53, lines 18-25, no 21.

[709] This translation is based on the Greek text, cited in the left column.

[710] See Reg. 1583.

[711] Moreover, as it is not an imperial act, it is not included in the *Regesten* of Dölger.

[712] Day mentions that "the emperor renounced his ambassador's action as going beyond his authority", see Day, *Genoa's response*, p. 29 and footnote 69.

[713] "...ἐπεὶ δὲ ὁ αὐτὸς βασιλικὸς λογοθέτης περὶ μὲν τῶν κατὰ καιρὸν τῆς τοῦ τυράννου ἐκείνου Ἀνδρονίκου εἰσελεύσεως ἐπιγεγονυιῶν ἡμῖν ζημιῶν οὐδὲ ἀπολογίαν ἡμῖν ποιῆσαι ἠνείχετο, ζητῶν ἀντιθεραπευθῆναι παρὰ τῆς χώρας ἡμῶν τῇ Ῥωμανίᾳ τὰς ζημίας..." in *MM*, vol. 3, p. 27, lines 29-33, no V and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 54, lines 8-12, no 21: "quoniam vero et ipse imperialis logotheta circa ea quae tempore tyranni illius Andronici usurpationis illata sunt damna, haud patiebatur ut causam nostram defensaremus, petens contra ut compensarentur a regione nostra Romaniae damna..."

[714] "...ἀλλ' ἡ τοῦ βασιλέως φιλανθρωπία καὶ τὸ πρὸς πάντας ἵλαρὸν καὶ εὐμενὲς τῇ ἐπὶ τῷ ἀποχαιρετισμῷ ἡμῶν ἡμετέρᾳ στυγνότητι καὶ τῇ περιπαθεῖ παρακλήσει παρακαμφθὲν τὰς πολλὰς τοῦ πανσεβάστου λογοθέτου ἐνστάσεις παραβλεψάμενον καὶ τῶν ἀγκαλῶν τῆς ἁγίας αὐτοῦ βασιλείας μὴ ἀπώσασθαι τὴν ἡμετέραν χώραν εὐδοκῆσαν, ἀμνηστίαν μὲν τῇ χώρᾳ ἡμῶν κατένευσε τῶν ζημιωμάτων, ὅσα πλοίοις ῥωμαϊκοῖς καὶ παραλίοις χώραις τῶν Ῥωμαίων ἀπὸ

Genoa for her part, will grant amnesty, as the emperor proposed, for cases in which Byzantium had caused damage before, during, and after the time of Andronikos. In other words, as a consequence of this treaty, all claims of Genoa against Byzantium are withdrawn.[715]

We are also informed that the two Genoese envoys carried with them a letter proving their mandate to negotiate and conclude a treaty on behalf of Genoa, something that corresponds to the practice that we have seen in other acts:

...καὶ ἐξ ἐντολῆς ἐγγράφου τοῦ τε ἐξουσιαστοῦ καὶ τῶν συμβούλων τοῦ κάστρου καὶ τῆς χώρας ἡμῶν καὶ καταδοχῆς τοῦ λοιποῦ πληρώματος τῆς Γενούας κατὰ τὸ ἐνδοθὲν ἡμῖν παρ' αὐτῶν τὰς τοιαύτας βασιλικὰς φιλοτιμίας παραδεχόμεθα.[716]	...et ex mandato scripturae potestatis et consiliariorum civitatis et regionis nostrae et comprobatione reliqui populi Genuae, secundum quod in ea nobis [praecipitur] ab ipsis tales regias largitiones recipimus..[717]	...and by the written order of the *podestà* and the councillors of our city and the approval of the rest of the people of Genoa we accept theimperial grants according to the power entrusted to us by them.[718]

The letter that the Italian envoys carried with them served as proof that they were in a position to negotiate and reach an agreement with the Byzantine emperor, an agreement that would be binding for the Genoese. There are

τοῦ μέρους τῆς Γένουας συνέβησαν, ἀμνημονῆσαι δὲ καὶ ἡμᾶς ἀπήτησε τῶν ἀπ' αὐτῆς τῆς εἰς τὴν Μεγαλόπολιν εἰσελεύσεως τοῦ τυράννου ἐκείνου Ἀνδρονίκου καὶ μέχρι καὶ τῆς ἐνωπίον τοῦ ἐνθέου κράτους αὐτοῦ παραστάσεως ἡμῶν ἐπελθουσῶν ἡμῖν ζημιῶν ὁπωσδήποτε παρά τινος τῶν ἀνθρώπων τῆς ἁγίας αὐτοῦ βασιλείας καὶ αὐτοῦ τοῦ δημοσίου..." in *MM*, vol. 3, p. 28, lines 14-26, no V and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 54, lines 26 – p. 55, line 1, no 21: "...sed imperatoris benignitas et eius erga omnes comitas et clementia nostro in ea salutatione moerori et commotioni solandae inclinata, multas pansevasti logothetae contentiones improbans, quumque brachia sacrae ipsius maiestatis haud repellere regioni nostrae placeret, oblivionem quidem regioni nostrae concessit damnorum quae navibus romanis et maritimis regionibus Romanorum ex parte Genua contigerant, et ut nos oblivisceremur poposcit eorum quae ex ipsa Constantinopolis usurpatione tyranni illius Andronici et usque ad nostram coram ipsius divina potentia praesentationem, inciderant nobis damna quoquomodo a quocumque homine sacrae ipsius maiestati et publicis ipsius officiis addicto...".

715 "...καὶ ἀμνηστίαν πάσης ζημίας ἔν τε τῇ ἐπεισφρήσει τοῦ τυράννου καὶ πρὸ τούτου καὶ μετὰ ταῦτα καὶ μέχρι καὶ νῦν τῇ χώρᾳ τῆς Γενούας ἀπὸ τοῦ μέρους τῆς Ῥωμανίας μερικῶς ἢ καθόλου γενομένης καθυπισχνούμεθα…" in *MM*, vol. 3, p. 29, lines 31-35, no V; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 56, lines 2 -5, no 21:"...et oblivionem cuiuscumque damni in invasione tyranni en ante hunc et post haec et usque un praesens regioni Genuae ex parte Romaniae partim vel ex integro facti promittimus...".

716 *MM*, vol. 3, p. 29, lines 28-31, no V.

717 *Cod. Dipl. Genova*, vol. III, p. 55, lines 35 – p. 56, line 2, no 21.

718 This translation is based on the Greek text, cited in the left column; the same holds for all translations henceforth where there is both a Greek and Latin text.

additional places in the document where the emperor refers either to the mandate of the envoys, or the envoys themselves refer to their mandate.[719] Once the agreement has been reached with the emperor, the envoys swear an oath confirming it. They swear on the Gospels and on the Holy Cross that they have been given a mandate by the *podestà* and the city of Genoa to swear upon the soul of the *podestà* of Genoa to the agreement that was made between Amico de Murta and the emperors. They also request compensation for the city of Genoa, as it is recorded in the document that they signed, following the order of the *podestà*, the consuls and the city of Genoa.[720]

In the text that follows, the envoys swear upon the soul of the *podestà* that he and the authorities of Genoa will promise and observe the agreement that has been reached with Isaac Angelos without fraud or bad intention.[721] The practice of promising on the soul of a ruler (in this case the *podestà*), was a

[719] See, for example, *MM*, vol. 3, p. 26, lines 21-22, no V [..κατὰ τὸ ἐντεταλμένον ἡμῖν] and *Cod. Dipl. Genova*, vol. III, p. 53, line 3, no 21 [quod mandatum fuerat nobis]; *MM*, vol. 3, p. 29, lines 28-30, no V and *Cod. Dipl. Genova*, vol. III, p. 55, lines 35-36, no 21.

[720] "...ὀμνύομεν εἰς τὰ ἅγια τοῦ θεοῦ εὐαγγέλια καὶ εἰς τὸν τίμιον καὶ ζωοποιὸν σταυρὸν, ὡς ὁ ῥηθεὶς ἐξουσιαστὴς, κοινῆς βουλῆς τοῦ κάστρου περὶ τούτου γενομένης, ἐνέδωκεν ἡμῖν ὀμόσαι ἐπάνω τῆς ψυχῆς αὐτοῦ τὴν παρὰ τοῦ κάστρου καὶ τῆς χώρας Γενούας γενομένην συμφωνίαν διὰ τοῦ τότε ἀποκρισαρίου τῆς Γενούας τοῦ Ἀμίκου δὲ Μούρτα πρὸς τὸν ἀοίδιμον βασιλέα κῦρ Μανουὴλ καὶ τοὺς κληρονόμους καὶ διαδόχους αὐτοῦ καὶ τὴν Ῥωμανίαν πρὸς αὐτοκράτορα Ῥωμαίων καὶ ἀεὶ αὔγουστον κῦρ Ἰσαάκιον τὸν Ἄγγελον, καθὼς καὶ πρὸς ἐκεῖνον ὠμόθη, καὶ ὅτι ἃ ὑπὲρ τοῦ κοινοῦ ἐζητοῦμεν τὰ καὶ ἐν τῷ ἐγγράφῳ τῷ παρ' ἡμῶν ὑπογραφέντι περιεχόμενα, ἐξ ἐνδοσίμου τοῦ αὐτοῦ ἐξουσιαστοῦ καὶ τῆς βουλῆς τοῦ αὐτοῦ κάστρου εἰάσαμεν διὰ τὴν ἀντισήκωσιν τὴν πρὸς τὸ κοινὸν γενομένην." in *MM*, vol. 3, p. 31, lines 1-13, no V; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 57, lines 4-14, no 21: "...iuramus in sancta Dei evangelia et in pretiosam et salutiferam crucem quod dictus potestas, communi consilio civitatis ad hoc habito, mandavit nobis iurare super animam ipsius illam conventionem ex parte civitatis et regionis factam per legatum tunc temporis Genuae Amicum de Murta erga illustrem imperatorem dominum Manuelem et heredes et successores ipsius et Romaniam, erga imperatorem Romanorum et semper augustum dominum Isaacium Angelum, sicut et erga illum iuratum est, et quod quae pro communi petebamus, quaequae in scriptura a nobis subscripta continentur ex incitamento ipsius potestatis et consilio eiusdem civitatis demisimus propter compensationem ergo commune factam."

[721] "...αὖθις ὀμνύομεν ἐπάνω τῆς ψυχῆς τοῦ ῥηθέντος ἐξουσιαστοῦ, ὡς ἵνα τὴν δηλωθεῖσαν συμφωνίαν καὶ ὁ ἐξουσιαστὴς καὶ οἱ κόνσουλοι καὶ οἱ σύμβουλοι καὶ αἱ κεφαλαὶ καὶ αὐτὸ τὸ κοινὸν τοῦ κάστρου καὶ τῆς χώρας ἡμῶν ὀμώσοσι, πληρώσωσι καὶ φυλάξωσι πρὸς τὸν κύριον βασιλέα Ῥωμαίων καὶ ἀεὶ αὔγουστον κῦρ Ἰσαάκιον τὸν Ἄγγελον καὶ τοὺς κληρονόμους καὶ διαδόχους αὐτοῦ καὶ πρὸς αὐτὴν τὴν Ῥωμανίαν εἰς τοὺς αἰῶνας χωρὶς δόλου καὶ περινοίας, καὶ ὡς ταῦτα ὀμνύομεν μετὰ ἀληθοῦς πίστεως χωρὶς δόλου καὶ περινοίας..." in *MM*, vol. 3, p. 31, lines 13-21, no V; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 57, lines 15-21, no 21: "Item iuramus super animam dicti potestatis sic ut expositam conventionem et potestas et consules et consiliarii et proceres et ipsum commune civitatis et regionis nostrae iurant, adimpleant et custodiant erga dominum imperatorem Romanorum et semper augustum dominum Isaacium Angelum et heredes et successores ipsius et ergo ipsam Romaniam in saecula, sine dolo et fraude... ".

common Western medieval practice when concluding a treaty.[722] The document was then signed and the seals were placed according to the order of the *podestà* of Genoa and its consuls:

…τὸ παρὸν ἐκτιθέμεθα ἔγγραφον καὶ ὅρκῳ μέλλοντες τοῦτο βεβαιῶσαι καὶ ταῖς οἰκειοχείροις ἡμετέραις ὑπογραφαῖς καὶ ταῖς συνηθέσι βούλλαις ἡμῶν ὡς κατὰ ἐντολὴν τοῦ ἐξουσιαστοῦ τῆς Γενούας καὶ τῶν συμβούλων καὶ καταδοχὴν τοῦ λοιποῦ πληρώματος τοῦ κάστρου καὶ τῆς χώρας ἡμῶν συμφωνοῦντες καὶ πράττοντες.[723]

...praesentem edimus scripturam hanc etiam iureiurando firmaturi et propria manu nostris subscriptionibus et consuetis bullis nostris iuxta mandatum potestatis Genuae et consiliariorum et acceptationem reliquae universitatis civitatis et regionis nostrae pacischentes et agentes.[724]

...we bring forth the present document and we will confirm it by an oath and our own signatures and the usual seals of ours because we agree and because we act according to the order of the *podestà* of Genoa and the consuls and the approval of the rest of the people of our city.

[722] See chapter V,5.
[723] *MM*, vol. 3, p. 30, lines 20-25, no V.
[724] *Cod. Dipl. Genova*, vol. III, p. 56, lines 24-29, no 21.

4.2.2 Granting immovable property

The emperor extended the Genoese district in Constantinople. In the text that follows, the two envoys refer to both older imperial grants and new ones:

...ὡς […] καὶ ἐν κατοχῇ καὶ νομῇ εἶναι οὐ μόνον τῶν προκατεχομένων παρ' ἡμῶν ἀλλὰ καὶ τῶν σήμερον ἐπιφιλοτιμηθέντων ἡμῖν…[725]	...ita […] et esse in detentione et distributione non solum eorum quae antea a nobis detinebantur, sed et eorum quae hodie nobis concedenda sunt.[726]	...that […] we must be in detention and possession not only of what we held before, but also of what has been conceded to us today in addition…

The term "ἐν κατοχῇ καὶ νομῇ εἶναι" is translated in Latin as "esse in detentione et distributione". The term *distributio* is a literal translation of the word "νομή" meaning "distribution" and proves that the translator was not a jurist.[727] The formalities of the grant follow, which are similar to those that we have seen in other chrysobulls:

...καὶ ἔσονται ταῦτα πάντα κατεχόμενα παρὰ τοῦ κάστρου καὶ τῆς χώρας Γενούας κατὰ τὴν περίληψιν τοῦ γενησομένου πρακτικοῦ τῆς τούτων παραδόσεως παρὰ τοῦ γραμματικοῦ τῆς βασιλείας μου Κωνσταντίνου τοῦ Πεδιαδίτου[728] καὶ τοῦ μεγαλεπιφανεστάτου πρωτονοταρίου Σεργίου τοῦ Κολυβᾶ[729] καὶ τοῦ δεσιμωτάτου Κωνσταντίνου τοῦ Πετριώτου,[730] πιστωθῆναι ὀφείλοντος καὶ δι' ὑπογραφῆς τοῦ πανσεβάστου σεβαστοῦ οἰκείου τῆς βασιλείας μου καὶ λογοθέτου τοῦ δρόμου, κῦρ	...et habebuntur haec omnia a civitate et regione Genuae iuxta ea quae comprehenduntur in acto quod faciendum est traditionis horum a scriba imperii mei Constantino Pediadita et illustrissimo protonotario Sergio Kolyba et venerabilissimo Constantino Petriota, cum debeat etiam fide obstringi per subscriptionem pan-sevasti sebasti privati maiestatis meae et logothetae publici cursus, domini Demetrii	...and all will be possessed by the city and country of Genoa according to the contents of the act of delivery, which will be drawn up by the secretary of my Majesty Constantine Pediadites and the *mega-lepiphanestatos proto-notary* Sergios Kolybas and *desimotatos* Constantine Petriotes, which also has to be ratified by the signature of the *pansebastos sebastos* the *oikeios* of

725 *MM*, vol. 3, p. 30, lines 10-16, no V.
726 *Cod. Dipl. Genova*, vol. III, p. 56, lines 14-19, no 21.
727 See also chapter I,3.
728 For Constantine Pediadites, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 30, p. 215, commentary, lines 49-50.
729 For Sergios Kolybas, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 35, p. 299, commentary, line 6.
730 For Constantine Petriotes, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 30, p. 215, commentary, line 51.

Δημητρίου τοῦ Τορνίκη,...[731]	Tornicae...[732]	my Majesty and *logothetes tou dromou*, *kyr* Demetrios Tornikes[733].

The Genoese will receive possession of the areas according to the contents of the act of delivery (*praktikon paradoseos*) made by the three Byzantine officials. The first of these officials must have been an imperial secretary, the second, a senior notary and the third could have been a judge. Moreover, the act of delivery was to have been ratified by the signature of a senior Byzantine official, in this case, the *logothetes tou dromou*, Demetrios Tornikes. In the following text the emperor guarantees his grants to the Genoese:

...καὶ παύσεται οὐδέποτε [...] ἡ κατοχὴ καὶ νομὴ τῶν ἀναγεγραμμένων παραλίων σκαλῶν καὶ τῶν οἰκημάτων καὶ τοῦ ἐμβόλου καὶ αὐτοῦ τοῦ οἴκου τοῦ Βοτανειάτου ἀφαιρεθήσονται ἐξ αὐτῶν, ὡς τῆς βασιλείας μου κατὰ τὴν δοθεῖσαν αὐτῇ ἔννομον ἐξουσίαν ἀφαιρουμένης τὰ τοιαῦτα πάντα ἀπὸ τῶν κατεχόντων αὐτὰ καὶ δωρουμένης τῷ κοινῷ τῆς Γενούας διὰ τὸ συμφέρον καὶ χρήσιμον τῇ Ῥωμανίᾳ.[734]	...et numquam cessabit [...] occupatio et concessio descriptarum maritimarum scalarum et habitaculorum et emboli et ipsius domus Botaniatae auferentur ab ipsis, cum maiestas mea secundum datam sibi legitimam potestatem vindicet talia omnia a detinentibus et tribuat communitati Genuae in utilitatem et commodum Romaniae.[735]	...and shall never stop [...] the detention and possession of the registered landing-stages and the buildings and the districts (*emboloi*) and of that very same house of Botaneiates be taken away from them, because my Majesty has removed all these by its legitimate power from those who possessed them and has granted them to the community of Genoa for the sake and interest of Romania.

The terms used to describe the possession of the areas acquired by the Genoese in this part of the chrysobull are the same in Greek, just as they are in an earlier passage: namely the terms "κατοχὴ" and "νομὴ." However, this time they are translated in the Latin text not into the terms *detentio* and *distributio*, as in the earlier passage, but into *occupatio* and *concessio*. The choice of terms in this passage also proves that the translator must not have had a legal background.

731 *MM*, vol. 3, p. 32, lines 18-25, no V.
732 *Cod. Dipl. Genova*, vol. III, p. 58, lines 14-20, no 21.
733 See Darrouzès, *Tornikès*, pp. 32-43.
734 *MM*, vol. 3, p. 33, lines 10-15, no V.
735 *Cod. Dipl. Genova*, vol. III, p. 59, lines 1-6, no 21.

In the edition of C. I. di Sant' Angelo, an act written only in Latin is inserted after this chrysobull. This act seemed to be by Demetrios Tornikes and deals with the extension of the Genoese district in Constantinople based on the provisions of the chrysobull. It includes the act of delivery (*praktikon paradoseos*), in which a detailed description of the area that is being granted also appears. The act ends as follows:

His hoc modo descriptis et numeratis et traditis prudentissimis legatis Genue Gulielmo Tornello et Guido Spinule presens traditionis practicum a nobis editum est,…[736]	Ater these in this way have been described, enumerated and delivered to the most prudent envoys of Genoa, Gulielmo Tornello and Guido Spinula, the present act of delivery has been edited by us...

Signatures of the three Byzantine officials follow, namely Constantine Pediadites, Sergios Kolybas and Constantine Petriotes.

In the chrysobull of 1192 which is examined here, following the extension of the Genoese district, a kind of servitude is established for the persons living in a particular area of that district. It is mentioned that the Genoese receive not only the house of Kalamanos but also some small houses that are preserved and some that are ruined. The Genoese can rebuild these houses and the persons who live in them are allowed to use the water from the well for their everyday use but not for the washing or watering of their horses.[737] It seems that this kind of servitude is established for the residents of the small houses, who must use water from a nearby well (*servitus aquae haustus*).

Moreover compensation could be asked by Byzantines from the state for the property that is lost but no-one can turn against the Genoese in matters relating to the present grants:

...τῶν ἀφαιρεθέντων ταῦτα τὸ ἱκανὸν σχεῖν μελλόντων ἀπὸ τοῦ δημοσίου. κἄν μὴ σχῶσι δὲ, μὴ κατὰ τῶν Γενουιτῶν ὀφειλόντων[738] ἐνάγειν, ἀλλὰ κατὰ τοῦ δημοσίου αὐτοῦ ἐντὸς τοῦ νενομισμένου καιροῦ· κἄν μὲν τύχωσιν	...deductis iis quae iuste solvenda sunt a publico. si vero non receperint, non contra singulos Genuenses debitores procedatur, sed contra publicum ipsum intra statutum tempus, et si quidem obtigerit	...the people from whom these things have been taken will receive compensation from the state. And if they do not receive compensation, it is not allowed to bring an action against the Genoese but against the state within the

[736] *Cod. Dipl. Genova*, vol. III, p. 73, lines 30-33, no 22.

[737] "…ἀλλὰ δὴ καὶ τὴν ἐν τῇ τοποθεσίᾳ τῶν Καλυβίων οἶκον τοῦ Καλαμάνου ἤτοι τοῦ Βοτανειάτου καὶ τὰ ἐκτὸς τοῦ τοιούτου οἴκου πρὸς τὸ δυτικὸν μέρος ἄνωθεν τῆς τοῦ Ἀντηφωνητοῦ κινστέρνης ἐνοικικὰ τά τε σωζόμενα καὶ τὰ φθάσαντα καταπεσεῖν, ὥστε καὶ ταῦτα ἀνεγερθῆναι παρ' αὐτῶν ἀβλαβῶς καὶ ἀζημίως τῇ κινστέρνῃ, ἀντλεῖν τε καὶ ὕδωρ ἀπὸ τῆς κινστέρνης εἰς οἰκείαν χρῆσιν τοὺς ἐν τοῖς τοιούτοις ἐνοικικοῖς καταμένοντας, ἄνευ μέντοι λουτροῦ καὶ ποτοῦ ἀλόγων,.." in *MM*, vol. 3, pp. 28, line 31 – p. 29, line 3, no V.

[738] The "ὀφειλόντων" is here connected to the "ἀφαιρεθέντων".

ἀντισηκώσεως, ἔχειν τὸ ἱκανόν τοῦ δοθέντος, κἂν μὴ τύχωσι δὲ στέργειν ὡς τῆς βασιλείας μου ἐπ' ἀδείας ἐκ τῶν νόμων ἐχούσης ἐν εἰδήσει δωρεῖσθαι καὶ τὰ ἀλλότρια, καὶ οὕτω δωρουμένης τὰ τοιαῦτα τῷ τῆς Γενούης πληρώματι.[739]	compensari, habeant iustum ratione dati: si vero non obtigerit, acquiescant in protectione maiestatis meae, quae potest ex legibus scienter largiri etiam aliena, et sic tribuentur talia populo Genuensi.[740]	legal time; and if they receive compensation they should be satisfied with what is given, but even if they do not receive any, they must be resigned to that, because my Majesty is entitled by law wittingly[741] to grant even that which belongs to someone else and thus grants [these areas] to the Genoese people.

At this point, while the Greek text is very similar to the Greek text of the chrysobull granted to Pisa by the same emperor in the same year, the Latin translation is different.[742]

[739] *MM*, vol. 3, p. 33, lines 24-30, no V.

[740] *Cod. Dipl. Genova*, vol. III, p. 59, lines 1-6, no 21.

[741] Meaning in full knowledge of what he is doing; this is the ultimate sovereignty of the emperor. See chapter V, 2.4.

[742] See the Greek passage of the chrysobull to Pisa (Reg. 1607, year 1192): "…ὡς τῶν τοιούτων τὸ ἱκανόν ἔχειν ὀφειλόντων ἀπὸ τοῦ δημοσίου, κἂν μὴ σχῶσι δὲ, μὴ κατὰ τῶν Πισσαίων ὀφειλόντων ἐνάγειν, ἀλλὰ κατὰ τοῦ δημοσίου αὐτοῦ ἐντὸς τοῦ νενομισμένου καιροῦ, κἂν μὲν τύχωσιν ἀντισηκώσεως, ἔχειν τὸ ἱκανὸν τοῦ δοθέντος, κἂν μὴ σχῶσι δὲ, στέργειν ὡς τῆς βασιλείας μου ἐπ' ἀδείας ἐκ τῶν νόμων ἐχούσης ἐν εἰδήσει δωρεῖσθαι καὶ τὰ ἀλλότρια καὶ οὕτω δωρουμένης τὰ τοιαῦτα τῷ τῆς Πίσσης πληρώματι..." in Müller, *Documenti*, p. 47, lines 2-11 and the Latin translation on p. 55, lines 93-101, no XXXIV: "...quoniam ipsi satisfactionem a fisco habere debent; si vero non habuerint, non debent in Pisanos agere, sed in ipsum fiscum, infra legitimum tempus. Et restaurationem adepti fuerint, habebunt satisfactionem per id quod dabitur; si autem non adepti fuerint, habebunt pro rato: quoniam Imperium nostrum licentiam ex legibus habet in noticia largiendi et aliena, et largitur hec Pisarum plenitudini".

5. The two letters of Isaac Angelos in 1192 (Reg. 1610, Reg. 1612)

There are two preserved letters by Isaac II Angelos regarding Genoa issued in 1192. Both are preserved in Greek and Latin translations of them also exist; all manuscripts can be found today in the state archives of Genoa. The first letter[743] is addressed to the *podestà*, Manegoldo of Brescia and the consuls of Genoa. It is an important act because it offers detailed information on how these chrysobulls were made. The emperor begins by confirming that he received two Genoese envoys who brought with them a letter proving that they were in a position to negotiate and conclude a treaty with the emperor on behalf of the city of Genoa:

...οἱ συνετώτατοι ἀποκρισάριος[744] ὑμῶν, ὅ τε Γιλίελμος Τορνέλος καὶ ὁ Γίδος Σπίνουλας, καταλαβόντες πρὸς τὴν βασιλείαν μου καὶ ἐνώπιον αὐτῆς στάντες τὸ τῆς ὑμετέρας φρονήσεως γράμμα τῇ βασιλείᾳ μου ἀνεκόμισαν, δι' οὗ καὶ πληροφορηθεῖσα ἡ βασιλεία μου ἐνδεδομένον ἔχειν αὐτοὺς ἐξ ὑμῶν τὸ τρακταῖσαι μετὰ τῆς αὐλῆς τῆς βασιλείας μου περὶ τῶν θελητέων ὑμῖν καὶ κατὰ τὰ ἀρέσαντα τῇ βασιλείᾳ μου καὶ αὐτοῖς ποιῆσαι.[745]

...your prudent envoys, Gulielmo Tornello and Guido Spinula have approached my Majesty and they have appeared before Him and brought the letter of your prudence by which my Majesty has been informed that they have your authority to negotiate with my Majesty's court about your wishes and to act according to what my Majesty and they like.

The emperor welcomed them and they proceeded to the negotiations.[746] Then it is stated that the agreements made were written down in Latin and confirmed by the envoys:

[743] Reg. 1610.

[744] It should be "ἀποκρισάριοι". It is unclear whether it is an error on the part of the editors or an error in the document itself.

[745] *MM*, vol. 3, p. 24, lines 6-12, no IV and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 50, line 15 – p. 51, line 2, no 20: "Sapientissimi legati vestri Gulielmus Tornellus et Guido Spinula cum venisset ad maiestatem meam et coram ipsa stetissent, vestrae prudentiae epistolam maiestati meae obtulerunt per quam certior facta maiestas mea mandatum ipsos habere ex vobis tractandi cum curia maiestatis meae de iis quae velitis et secundum quas placuerint maiestati meae ipsis facere." (here in the Latin the "καὶ" before "αὐτοῖς" is left untranslated).

[746] "...εὐμενῶς τε αὐτοὺς παρεδέξατο καὶ περὶ ὧν ἐζήτουν τρακταῖσαι διωρίσατο, καὶ πολλὴν τὴν σπουδὴν ὑπὲρ τοῦ κάστρου ὑμῶν εἰσαγαγόντες καὶ ἐπὶ τῷ ὑπὲρ τῶν θελητέων ὑμῖν τρακταϊσμῷ πολλὰ κοπιάσαντες ἴσχυσαν κατὰ τὸ ἀρέσκον αὐτοῖς τὴν τῆς βασιλείας μου εὐμένειαν καὶ φιλοτησίαν τῷ κάστρῳ ὑμῶν προξενῆσαι" in *MM*, vol. 3, p. 24, lines 13-17, no IV; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 51, lines 2-6, no 20: "libenterque ipsos excepit et de quibus qaerebant tractare definivit. et multum studium pro civitate vestra inducentes et in eorum quae a vobis expetuntur tractatione magnopere laborantes, voluerunt iuxta eorum desiderium maiestatis meae benevolentiam et amicitiam vestrae Civitati conciliare."

...καὶ τὰ συναρέσαντα διαλαβόντες ἐγγράφῳ λατινικοῖς γράμμασι γνωστοῖς αὐτοῖς γραφέντι καὶ οἰκειοχείρως παρ' αὐτῶν ὑπογράφεντι καὶ ταῖς συνήθεσι βούλλαις αὐτῶν ὑποσημανθέντι καὶ ὅρκῳ αὐτῶν σωματικῷ βεβαιωθέντι χρυσόβουλλον λόγον τῆς βασιλείας μου ἐκομίσαντο ἐπὶ πᾶσι τοῖς τῇ βασιλείᾳ μου καὶ αὐτοῖς συναρέσασιν.[747]

...and after they set down what was agreed in a document written in Latin -that they know-, signed by their own hand and sealed by their usual seals and confirmed by corporal oath, they obtained a chrysobull from me on all the points that were agreed to by my Majesty and them.

The chrysobull was taken to Genoa by two Byzantine envoys, an imperial secretary and an interpreter:

...καὶ ἀπεστάλη ὑμῖν μετὰ τῶν παρόντων ἀποκρισαρίων τῆς βασιλείας μου, τοῦ τε γραμματικοῦ τῆς βασιλείας μου Νικηφόρου τοῦ Πεπαγωμένου καὶ τοῦ διερμηνευτοῦ Γηράρδου τοῦ Ἀλαμανοπούλου, καὶ ἔξεστιν ὑμῖν τὰ συμφωνηθέντα παρ' αὐτῶν ὅρκοις κατὰ τὸ σύνηθες βεβαιωσαμένοις καὶ ἐγγράφῳ τοὺς τοιούτους ὑμῶν ὅρκους διαλαβοῦσι καὶ διὰ τῶν τοιούτων ἀποκρισαρίων τῆς βασιλείας μου πρὸς τὴν βασιλείαν μου ἀναπέμψασι καὶ χρυσόβουλλον λόγον τῆς βασιλείας μου κομίσασθαι ὡς ἐκ τῆς χειρὸς τῆς βασιλείας μου ἐκ τῆς χειρὸς αὐτῶν καὶ οὕτως αἰωνίαν τῇ χώρᾳ ὑμῶν τὴν ἐκ τῆς βασιλείας μου καὶ τῶν κληρονόμων καὶ διαδόχων αὐτῆς καὶ τῆς Ῥωμανίας ἀγάπην περιποιήσασθαι.[748]

...and it was sent to you by the present envoys of my Majesty, the imperial secretary Nikephoros Pepagomenos[749] and the interpreter Gerardo Alamanopoulos,[750] and you can, after having confirmed as usual what has been agreed by them by oaths and after setting these your oaths down in a document and having sent them through these imperial envoys to my Majesty, obtain a chrysobull of my Majesty, from their hand as if from the hand of my Majesty and thus to bring about eternal love between your city and my Majesty and His heirs and successors and Romania.

[747] *MM*, vol. 3, p. 24, lines 17- 22, no IV; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 51, lines 6-11, no 20: "...et quae complacuerunt exarantes scriptura latinis litteris sibi notis delineata, et propria manu ab ipsis subscripta et consuetis sigillis subsignatas et iureiurando ipsorum corporali firmata, diploma cum aurea bulla maiestatis meae receperunt super omnia quae maiestati meae et ipsis complacuerunt."

[748] *MM*, vol. 3, p. 24, line 22 – p. 25, line 4, no IV; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 51, lines 11-19, no 20: "et missum fuit vobis cum praesentibus legatis maiestatis meae cumque scriba maiestatis meae Nicephoro Pepagomeno et interprete Gerardo Alamanopulo. et expedit ut vos concinnata ab ipsis per iuraiuranda comprehendentes. et per huiusmodi legatos maiestatis meae ad maiestatem meam ipsam remittentes, et diploma cum aurea bulla maiestatis meae recipiatis tamquam ex manu maiestatis meae et ex manu ipsorum et sic aeternam regioni vestrae ex maiestate mea et heredibus et successoribus ipsius et Romania benevolentiam conciliatis."

[749] For Nikephoros Pepagomenos, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 34, p. 281, commentary, lines 10-11.

In the *Codice Diplomatico*, we find an act dated 2nd August 1192 by which the consuls of the city ratified the treaty of these two Genoese envoys with the emperor and swore an oath to observe the provisions in the presence of Byzantine envoys. After the Genoese people took the oath, the two envoys probably handed them the chrysobull, acting as representatives of the emperor. The emperor mentions in the following passage that two copies of the agreement were made: one was given to the Genoese and one was kept in the offices of the empire:[751]

...ἵνα δὲ μὴ καὶ ἀμφιβάλλον ἴσως ἐπί τισι τῶν συμφωνηθέντων ὑμῖν γένοιτο, δυσὶν ἰσοτύποις ἐγγράφοις τὰ συμφωνηθέντα παρ' αὐτῶν διαληφθῆναι ἡ βασιλεία μου ᾠκονόμησε καὶ ταῖς ὑπογραφαῖς αὐτῶν καὶ ταῖς συνήθεσι σφραγίσι βεβαιωθῆναι καὶ τὸ μὲν ἓν τούτων τοῖς τοῦ λογοθέτου τοῦ δρόμου χαρτίοις τῆς βασιλείας μου ἐναποτεθῆναι, τὸ δὲ ἕτερον ἀποκομισθῆναι ὑμῖν παρὰ τῶν ἀποκρισαρίων τῆς βασιλείας μου εἰς πληροφορίαν καὶ πίστωσιν τοῦ κατὰ ἀρέσκειαν καὶ συναίνεσιν καὶ θέλησιν τῶν ἀποκρισαρίων ὑμῶν τὰ τούτοις ἐμπεριεχόμενα συμφωνηθῆναι.[752]

...and so that there is no doubt whatsoever on any of the points that have been agreed with you, my Majesty has ruled that what has been agreed by them should be written down in two identical texts and should be confirmed by their signatures and the usual seals and have one of them deposited in the imperial archives of the *logothetes tou dromou*, and the other one given to you by my Majesty's envoys as a proof and confirmation of the fact that their content has been agreed to according to the wish and the consent and the will of your envoys.

There are thus two copies of the same act, which are equally valid (δυσὶν ἰσοτύποις ἐγγραφοις = *duobus eiusdem formae*): one is to be kept in the office of the *logothetes tou dromou*, whereas the other is handed to the Genoese; both acts were sealed and signed. As stated clearly in the above

750 "...nos consules […] promittimus et nos pro commune Ianue eidem domino Isachio Dei gratia imperatore […] per vos Nikiforum Pepagomenum grammaticum eius imperii et Girardum interpretem legatos ipsius…." in *Cod. Dipl. Genova*, vol. III, p. 75, lines 1-2 and p. 76, lines 2-6, no 24. Further on in the same act it is mentioned: "Acta sunt hec Ianue in ecclesia Sancti Laurentii martiris, in publico parlamento, presentibus et pro domino imperatore hec omnia recipientibus, supradictis legatis Nikiforo Pepagomeno et Girardo interprete, nec non et presentibus Guilielmo Tornello et Guidone Spinula atque consulibus…." in *Cod. Dipl. Genova*, vol. III, p. 77, lines 18ff., no 24.

751 *Cod. Dipl. Genova*, vol. III, pp. 75- 78, no 24.

752 *MM*, vol. 3, p. 25, lines 4-13, no IV; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 51, lines 19-27, no 20: "Ne autem dubium fortasse super aliquod pactorum vobis exsurgat, duobus eiusdem formae exemplaribus concinnata ab ipsis pacta hinc inde assumi maiestas mea disposuit et subscriptionibus ipsorum et consuetis sigillis firmari et unum quidem horum inter chartas cancellariis cursus maiestatis meae deponi et, alterum vero, remitti vobis per legatos maiestatis meae in testimonium et fidem quod secundum placitum et assensum et voluntatem legatorum vestrorum quae in his continentur concinnata fuerint."

abstract, the reason that two copies of the agreement were made is that the parties want to avoid controversies over what has or has not been agreed.[753]

The second letter[754] is addressed to the consuls, the senate, the nobles and all the people of Genoa. The emperor complains because despite their agreements with the emperor, a Genoese ship under the command of Gulielmo Grasso[755] together with a Pisan ship attacked Byzantine subjects. First they attacked the people at the harbour of Rhodes and stole their property. Then they pillaged a Venetian ship that was returning from Palestine and Egypt carrying envoys from Byzantium as well as merchandise and many gifts of the sultan for the Byzantine emperor including treasures and animals. The Genoese and the Pisans attacked the ship, killed many people on board and stole all the goods.[756] Finally, they pillaged another ship from Lombardy also carrying Byzantine envoys; once again they stole goods and they killed people on board. The emperor describes the attacks in detail and the damage that was done to his empire, his family members and to Byzantine merchants and asks compensation. The emperor notifies the Genoese that he will continue to show an attitude of tolerance, provided that they proceed in the proper punishment of the wrongdoers and the payment of compensation for the damage of the goods.[757] The emperor clarifies his request further:

…ἀναδιδάσκει γοῦν ταῦτα ὑμᾶς ἡ βασιλεία μου, καὶ ἐπιζητεῖ ἐξ ὑμῶν κατὰ τὴν συμφωνίαν ὑμῶν τήν τε ἐπὶ τοῖς ἀποκτανθεῖσιν ἐκδίκησιν καὶ τὴν τῶν πραγμάτων πάντων ἱκάνωσιν...[758]	...therefore my Majesty informs you about this and requests from you according to your agreement the punishment for the killed persons and the compensation for all the goods...

Here a distinction is made between the criminal aspect of the incident, as the emperor asks for the pirates to be punished (τήν τε ἐπὶ τοῖς ἀποκτανθεῖσιν ἐκδίκησιν) and the payment of compensation for the goods (ἱκάνωσιν τῶν

[753] See also chapter V,5.2.

[754] Reg. 1612.

[755] For Gulielmo Grasso, see Gastgeber, *Übersetzungsabteilung*, vol. 3, no 36, p. 312, commentary, line 11.

[756] We will see more information about this incident when examing the chrysobull of 1193 (Reg. 1616) in chapter IV,6.

[757] "….ὅμως ἠνέχετο καὶ εἰσέτι ἀνέχεται, ἂν εἴδησιν δοῦσα τῇ ὑμετέρᾳ συνέσει ἐκδίκησιν ἐξ αὐτῆς λάβοι τὴν προσήκουσαν καὶ ἱκάνωσιν τῶν πραγμάτων τῶν τε πραγματευτῶν καὶ τῶν τῆς βασιλείας μου καὶ αὐτῶν τῶν παρὰ τοῦ σουλτάνου τῆς Αἰγύπτου σταλέντων τῇ βασιλείᾳ μου…" in *MM*, vol. 3, p. 39, lines 7-11, no VI; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 80, lines 27-31, no 25: "attamen se continuit et adhuc se continet, si forte notitiam praebens vestrae consientiae vindictam ab ipsa consequatur convenientem, et satisfactionem mercium et mercatorum tum imperii mei, tum eorum qui a sultano Aegypti missi fuerant ad maiestatem meam..."

[758] *MM*, vol. 3, p. 39, lines 25-28, no VI; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 81, lines 9-11, no 25: "Edocet igitur haec vos maiestas mea et reposcit a vobis iuxta foedus nostrum de interfectis ultionem et rerum omnium satisfactionem."

πραγμάτων). The word *foedus* is used in Latin, which refers more to a treaty than a simple agreement. The Greek "συμφωνία" is a more neutral word in comparison to the Latin *foedus*, the latter having more of an international connotation. There is no information from other preserved documents with regard to an earlier agreement about the incident with the Genoese pirates described here. If there was an earlier agreement about this incident, it is unclear why the emperor describes the whole incident again in detail asking the Genoese for punishment of the pirates and the payment of compensation for the damage that he and the merchants have suffered. One reason could be that despite an agreement that was made between the two sides about this incident, Genoa had failed to act and thus, the emperor finds it necessary to again refer to the incident in detail, this time giving a warning to the city of Genoa in case they do not react. Another possibility is that he refers to the former agreements that were made between Byzantium and Genoa in the form of imperial chrysobulls by which legal co-operation was established between the two parties. For example, in the chrysobull of 1169,[759] it was regulated that if a Genoese harms someone within the empire, that this must be reported to the city of Genoa by the emperor and that the city must act in good faith and administer justice and retribution for the honour of the emperor. This provision is repeated in the chrysobull of 1192[760] which was issued some months before the present imperial letter.[761] In that chrysobull, the earlier oath of the Genoese envoy was inserted in Greek:

...καὶ ἐάν τις Γενουΐτης ποιήσῃ πταῖσμα τῇ βασιλείᾳ αὐτοῦ ἢ τοῖς ἀνθρώποις τῆς βασιλείας αὐτοῦ, οἱ κόνσουλοι τῆς Γενούας μετὰ καλῆς πίστεως ἵνα ἔχωσι χρέος ποιῆσαι δίκαιον μετὰ τὸ λαβεῖν εἴδησιν παρὰ τοῦ κυρίου βασιλέως.[762]

...and if some Genoese harms His Majesty or people of His Majesty, the consuls of Genoa are obliged with good faith to administer justice after they are notified by the *kyr* emperor.

It seems more logical that the emperor refers to this agreement, thus reminding them of what happens when a Genoese is responsible for inflicting harm on the people of the empire. Of legal interest is the matter regarding the confiscation of the goods owned by the Genoese in the Byzantine capital, about which the emperor warns the Genoese. Here is the corresponding passage of the chrysobull:

...εἰ δὲ μὴ ἱκανωθήσεται ταῦτα πάντα ἀπὸ τῶν ἐν τῇ Μεγαλοπόλει παρευρεθέντων Γεννουϊτῶν, οὓς ἐν ἐλευθερίᾳ μέχρι καὶ

...and if all these [the amounts that the emperor asks] will not be satisfied by the Genoese that are in Constantinople,

[759] Reg. 1488.
[760] Reg. 1609.
[761] The chrysobull, Reg. 1609 was granted in April 1192 and the present letter, Reg. 1612 was issued in November of the same year.
[762] *MM*, vol. 3, p. 34, lines 21-24, no V.

νῦν καὶ ἐν πάσῃ ἀδείᾳ διαφυλάττει ἡ βασιλεία μου καὶ ἐν κατασχέσει τῶν δεδωρημένων τῇ Γεννούᾳ ἀκινήτων ἐντὸς τῆς Μεγαλοπόλεως ὄντας, διατηρεῖ μόνας τὰς πραγματείας αὐτῶν ἐν ἀσφαλεῖ θεμένη, ὥστε παρ' αὐτῶν διαπωλεῖσθαι, καθὼς ἂν αὐτοὶ καὶ πρὸς οὓς βούλωνται, καὶ τὸ τίμημα τούτων ἐναποτίθεσθαι, ὡς ἂν εἰ μὴ φροντὶς τῇ ὑμετέρᾳ χώρᾳ γένοιτο τῆς ὀφειλομένης ἐπὶ τῷ τοιούτῳ ἀτοπήματι ἐκδικήσεως καὶ τῆς τῶν πραγμάτων πάντων ἱκανώσεως, ἱκανωθῆναι ταῦτα ἐξ αὐτῶν τήν τε βασιλείαν μου καὶ τοὺς ἐν τοῖς τοιούτοις πλοίοις ὄντας πραγματευτὰς καὶ ἔκτοτε πάλιν εἶναι τὴν πρὸς ὑμᾶς τῆς βασιλείας μου εὐμένειαν, εἰ βούλεσθε, σῶαν καὶ ἀσφαλῆ.[763]

whom until now my Majesty keeps in freedom and complete liberty in possession of the immovable properties granted to Genoa while they are in Constantinople, [then my Majesty] will preserve only their merchandises in security, in such a way that they can sell them in the way and to whom they want and have the price deposited, so that if your land does not care for restoring what is claimed because of this outrage and compensate for all the things, [then] compensation will be made from these to my Majesty and to the merchants who were on board on these ships; and from that moment my imperial good will towards you will, if you want, be safe and secure again.

In other words, the emperor warns the Genoese that if the Genoese living in Constantinople do not pay compensation for the damage caused by the pillage of the ship, he will keep the merchandise of the Genoese living in Constantinople as security: the Genoese in the capital could sell their merchandise to whomever they chose but the money from the sale will be deposited (τὸ τίμημα τούτων ἐναποτίθεσθαι), so that if Genoa does not pay compensation, the emperor and the Byzantine merchants would be satisfied by that deposit.[764]

Dölger states that the confiscation was ordered by this chrysobull.[765] However, Laiou argues that the emperor only warned them here and did not actually confiscate their goods by this act.[766] Indeed the most logical explanation is that the emperor only warns Genoa here and has not already

[763] *MM*, vol. 3, p. 39, line 28 – p. 40, line 5, no VI; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 81, lines 11-21, no 25: "...quod si non compensabuntur haec omnia ab iis qui Constantinopoli inveniuntur Genuensibus, quos in libertate usque adhuc et in omni securitate tuetur maiestas mea in possessione immobilium Genuae donatorum intra Constantinopolim existentes observat solas merces ipsorum in securo ponens ut ab ipsis vendantur, sicut ipsi et ad quos velint, et pretium eorum deponatur, ut si cura vestrae regioni non fuerit vindictae tali debitae facinori et rerum omnium satisfactionis, compensetur ex iis maiestas mea et qui fuerunt in istis navigiis mercatores et exinde rursus sit erga vos maiestatis meae benevolentia, si vultis, salva et secura."

[764] We will see in a later chrysobull (Reg. 1616), issued in November 1193 that the emperor indeed ordered the Genoese living in Constantinople to pay an amount described as a deposit, which was kept by some Byzantine guarantors as a security and from which amount the Byzantine merchants would receive compensation for the damage suffered as a result of the attack of the ship, in case Genoa did not react.

[765] Dölger, *Regesten*, p. 312.

[766] Laiou, *Byzantine trade*, pp. 157-158.

'confiscated' the goods of the Genoese living in Constantinople, since by the following act[767], the emperor orders the payment of a deposit by the Genoese living in Constantinople which is used as a security.

[767] That is chrysobull Reg. 1616.

6. The chrysobull of Isaac II Angelos in 1193 (Reg. 1616)

6.1 Introduction

This chrysobull is preserved in its original form in Greek and a Latin translation of it also exists; the manuscripts of the Greek and Latin text are currently kept in the state archives of Genoa.[768] In the beginning of the act, it is mentioned that an attack was made by Genoese pirates[769] against a ship that carried Byzantines and this created tension between the two sides. As we will see, the Genoese living in Constantinople had to pay the amount of 20.000 *hyperpyra* as a deposit –"παρακαταθήκη", as it is referred to in the act- for the damage that Byzantines had suffered resulting from the pillage of this ship. Byzantine envoys were sent to Genoa to announce this event. The Genoese accepted the Byzantine mission and sent envoys back to the Byzantine capital to negotiate with the Byzantines. The Genoese envoys explained to the emperor that it was not right to reject the whole community of Genoa which was faithful to the emperor and to Romania, because of the actions of two or three bad Genoese. They also reassured him that the city of Genoa will try to identify and locate the pirates and bring them before the emperor. Isaac II Angelos therefore ordered that the Genoese money kept as deposit, should be returned to the Genoese. Moreover, on behalf of Genoa, the two envoys asked for confirmation of the former chrysobull; this was agreed to by the emperor because the envoys and the Genoese living in Constantinople promised that Genoa would observe the provisions of the chrysobull.[770] The oath of the envoys is inserted in this chrysobull by which they confirm, among other things, that they have received the amount of 20.000 *hyperpyra* and that they promise on behalf of their country that the Genoese will observe all the agreements made with the Byzantine emperor. This act is interesting for a legal historian because of the information about the deposit of the Genoese. It also includes information about negotiations and the making of treaties between the Byzantines and Genoa and the role and power of the envoys.

[768] It has the type of a chrysobull *sigilion* (χρυσόβουλλον σιγίλιον) and words are included in the end in red ink; for the description of the manuscript, see Dölger, *Regesten*, pp. 314-15, Reg. 1616.

[769] It seems that there were also some Pisan pirates who took part in the pillage of the ship. This is the attack that was mentioned in the letter of Isaac II Angelos to Genoa in 1192 (Reg. 1612).

[770] *MM*, vol. 3, p. 43, lines 10-13, no VII.

6.2 Legal Issues

6.2.1 Questions about the deposit (παρακαταθήκη)

As we have already seen in the introduction, there was tension between the Byzantines and the Genoese because some Genoese attacked a Venetian ship that carried Byzantines. The Byzantine merchants from Constantinople who had survived the attack, had complained to the emperor about the loss of their property. They wanted legal remedy for this incident and asked the emperor if they could receive compensation from the Genoese living in Constantinople for the things that they had lost.[771] The emperor asked the Genoese living in Constantinople to take care of the matter, but they failed to take any action to resolve the problem. Meanwhile, the residents of the capital became increasingly angry and demanded the emperor for compensation for their stolen goods.[772] The emperor wanted to restore peace between the two sides and at the same time observe the last chrysobull that he had granted to Genoa. After an imperial order, an amount of money was given by the Genoese living in Constantinople to some Byzantines (ἐγγυηταί) as a deposit, under the following condition: if the citizens of Genoa, as soon as they had heard about the event, proceeded to take care of the matter, this amount would be returned to the Genoese living in Constantinople. If however, Genoa neglected to act, the money would be given to the Byzantine merchants who had suffered damage as a result of the attack of the Genoese pirates. In the Greek text, the word used is "παρακαταθήκη"[773] (in the Latin preserved translation, the word *depositum* is used),[774] i. e. deposit, but questions arise as to, whether in this case we are actually dealing with a deposit and if so, what the procedure followed could be and why the term "ἐγγυηταί" was used in this document. Furthermore the money is handed to a third party, to some Byzantine subjects. Who is this third party and is he, or are they, connected in some way with the Byzantine merchants who had suffered damage from the actions of the Genoese pirates?

---

[771] "...καὶ τὴν ἐκδίκησιν λιπαρῶς ἐξαιτουμένων καὶ τῆς βασιλείας μου ὀσημέραι δεομένων, ἐκχωρῆσαι αὐτοῖς ἱκανωθῆναι τὰ πράγματα αὐτῶν ἐκ τῶν ἐνταῦθα εὑρισκομένων Γενουϊτῶν" in *MM*, vol. 3, p. 41, lines 20-23, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 103, lines 4-6, no 35: "...et vindictam enixe deposcentibus et maiestatem meam tota die deprecantibus ut compensari permitteret res eorum a Genuensibus qui hic inveniuntur...".

[772] "...ἀγριωτέρως αὐτοῖς ὁ τῶν Κωνσταντινουπολιτῶν ἐπηγείρετο δῆμος, καὶ θερμοτέρως ἐδεῖτο τῆ βασιλείας μου ἐξ αὐτῶν ἱκανωθῆναι τὰ ἀπὸ του τοιούτου πλοίου ἀφαιρεθέντα" in *MM*, vol. 3, p. 41, lines 33-35, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 103, lines 14-17, no 35: "...tum rursus acerbius in ipsos Constantinopolitanus incitabatur populus et ferventius precabatur maiestatem meam ut ab iis resarcirentur ea quae ex eo navigio fuerant ablata...".

[773] *MM*, vol. 3, p. 42, line 8, no VII.

[774] *Cod. Dipl. Genova*, vol. III, p. 103, line 24, no 35.

Another interesting point is that the Genoese living in Constantinople are ordered to pay an amount of money as a deposit because of the unlawful acts of some other Genoese. In other words, they are 'held liable' because of the acts of their fellow-countrymen.

6.2.2 Deposit in Byzantine law

In Byzantine legal texts, the contract of deposit is referred to as "παρακαταθήκη" or "παραθήκη". The second title of the thirteenth book of the *Basilica* is entitled "Περὶ παρακαταθήκης καὶ τῆς κινουμένης ἀγωγῆς κατὰ τοῦ παράθεσιν λαβόντος".[775] There we read the definition of deposit, which repeats the text of the *Digest*.[776] In the same title of the *Basilica*, provisions are included about the action that someone takes against the depositee. The contract of deposit was a *contractus re*, which meant that it was only completed by handing the good over to the depositee whose task was to keep it safe. The person who handed over the good was called the *depositor* or *deponens*, whereas the person who kept it safe was called *depositarius*, and in Byzantine legal texts the terms "παραθέμενος" and "παραθηκάριος" were used respectively. The fact that the depositee does not profit from the contract of deposit nor receives in principle remuneration, explains why his liability is restricted mainly to willful harm (*dolus*), and in some cases also fault.[777] Referring to the *Basilica*, the commentator of the *Ecloga Basilicorum* describes the different grades of liability that correspond to various contracts. He provides a definition of the deposit and refers to the grade of liability that a depositee has.[778] According to this Byzantine legal text from the 12th century, the depositee was held liable for willful harm (*dolus*) and serious fault (*culpa lata*). Further on, the commentator mentions that in a deposit, the only person who profits is the owner of the thing and not the depositee, because the latter is only a keeper (someone who keeps the thing safe); that is why he (the depositee) does not profit at all, but is actually burdened with the care of accepting the burden, that is, keeping a foreign thing safe.[779] Title 59 of *Peira* also deals with the issue of deposit [Περὶ παραθήκης] and the actions deriving from that contract.[780] In the first paragraph of this title, the law of the *Basilica*

[775] B. 13,2,1 = D. 16,3,1 (BT 720/1 – 724/24).

[776] B. 13,2,1.= D. 16,3,1 (BT 720/5-6): "Ὑυλπιανός. Παραθήκη ἐστὶ τὸ ἐπὶ παραφυλακῇ τινι διδόμενον..." [Translation: deposit is what is given to someone to keep safe]. See also BS 672/7 (sch. P 2 ad B. 13,2,1 = D. 16,3,1): "Δεπόσιτόν ἐστιν, ὅπερ ἐπὶ τῷ φυλάττειν ἐδόθη τινί" [Translation: deposit is named as that which is given to someone in order to keep it safe].

[777] See B. 13,1,5 = D. 13,6,5 (BT 712/11-13). For a detailed reference to the liability of the depositee, see Zimmermann, *Obligations*, pp. 208ff.

[778] *Ecloga Basilicorum*, p. 87 (comment on B. 2,3,23 = D. 50,17,23).

[779] *Ecloga Basilicorum*, p. 88 (comment on B. 2,3,23 = D. 50,17,23).

[780] Zepos, *JGR*, vol. IV, pp. 230-31. About the *Peira*, see *ODB*, vol. 3, p. 1617, Troianos, *Piges*, pp. 295-300.

is quoted which refers to the action resulting from a contract of deposit.[781] The author also quotes the law of the *Basilica* that refers to the way that the contract of deposit should be concluded. It is mentioned that at least three witnesses are required so that in case a dispute arises, the witnesses could also be used. The actual text of the *Basilica* here is more extended than what is quoted in *Peira*, but the content of both texts is the same.[782]

Another form of deposit in Roman and Byzantine law was the so-called *depositum in sequestre* (and in Greek texts "μεσεγγύησις") by which a good was given to a third party (*sequester* / μεσσεγγυούχος) to keep safe under the condition that he would give it back to one of the parties, if the condition was fulfilled.[783] The text of the *Digest* is reflected in the *Basilica* as follows:

Μεσεγγυητής ἐστι κυρίως ᾧτινι πολλοὶ εἰς ὁλόκληρον παρέθεντο πρᾶγμα ἐπὶ δήλῳ ὅρῳ τοῦ φυλάξαι καὶ ἀποδοῦναι.[784]	The proper definition of *sequestrator* is the person to whom more persons in full [*in solidum*] have deposited a thing under the clear condition that he keeps it and gives it back.

By a *depositum in sequestre*, more people give the good to the third party. In the *Basilica* we read:

Τῷ μεσεγγυητῇ οὐχ εἷς μόνος, ἀλλὰ πολλοὶ παρατίθενται φιλονεικείας αὐτοῖς γινομένης, καὶ δοκεῖ ἕκαστος εἰς ὁλόκληρον παρατίθεσθαι· τοὐναντίον δὲ ἐπὶ πολλῶν πρᾶγμα κοινὸν παραθεμένων.[785]	To a sequester-depositee it is not one person but more who deposit [a thing] because of a conflict between them and it is considered that every one gives [the thing] in full [*in solidum*]; contrary to when many persons deposit a common thing of them.

It is clear from this passage that in the case of a *depositum in sequestre,* more people make the deposit, yet it is also the case that each one hands over the object *in solidum*, which is different from when more people hand something over that is held in common; in which case we speak of co-ownership. It is obvious that in a *depositum in sequestre*, at the moment in which the parties hand the object to the sequester, it is one party that has the object at its disposal and hands it over; the fact that it is the case that each one hands the thing in *solidum*, in other words, the expression "καὶ δοκεῖ ἕκαστος εἰς ὁλόκληρον παρατίθεσθαι," refers to the law of obligations and the bond that each party has. The legal position of a sequester-depositee was different from that of a normal depositee. In the case of a *depositum in sequestre*, the

[781] Zepos, *JGR*, vol. IV, p. 230 and B. 13,2,44 (BT 733/8-13).
[782] See *Peira*: 59,4 and B. 22,4,1 = Nov. 73.c.1 (BT 1069/5-14).
[783] D. 16,3,6 and D. 50,16,110. See Zimmermann, *Obligations*, pp. 219-220.
[784] B. 13,2,6 = D. 16,3,6 (BT 725/17-19).
[785] B. 13,2,17 = D. 16,3,17 (BT 728/1-6).

sequester-depositee was considered possessor of the deposited good, something that is different from a normal depositee who does not have possession of but rather 'holds' the object.[786] The *depositum in sequestre* could be concluded either by free will or could be made obligatory.[787] Finally, it seems that the term "παρακαταθήκη" was used in Byzantine law, especially in later Byzantine law, to also describe other kinds of legal forms.[788] Unfortunately, I did not come across the terms "παρακαταθήκη", "παραθήκη" or "μεσσεγγύησις" in the acts of the monasteries of Athos and Patmos that I have examined.[789] However, I can not exclude the possibility that the acts of monasteries may include deposits, but described with another term.[790]

[786] B. 13,2,17 = D. 16,3,17 (BT 728/1-6)..

[787] A characteristic example of an obligatory *sequestratio* is when a claimed good was given to a third party for him to keep and to return after the trial to the person who won the case. See B. 2,2,107 = D. 50,16,110 (BT 34/4-5) and BS 684/1-6 (sch. P 3 and 4 ad B. 13,2,5 = D. 16,3,5). See Kaser, *Zivilprozessrecht*, p. 294, Petropoulos, *Romaikon Dikaion*, pp. 812-13.

[788] See Papagianni, *Nomologia*, pp. 105-111; From the documents that she has examined which consist of decisions of ecclesiastical courts during the Byzantine and Post-Byzantine period, Papagianni observes that the term "παρακαταθήκη" is also used to determine other legal relations, for example the "ἐντολή" (= *mandatum*).

[789] I have taken into account the following acts up to 1204: *Actes de Lavra, Actes d' Esphigménou*, *Actes du Prôtaton*, *Actes de Kastamonitou*, *Actes de Xénophon*, *Actes de Dionysiou*, *Actes de Kutlumus*, *Actes de Saint-Pantéléèmôn*, *Actes de Chilandar*, *Actes du Pantocrator*, and Vranousi, *Patmos* and Nystazopoulou, *Patmo*s.

[790] In only one act of the monastery of Patmos by which the Patriarchal notary Adam makes an act of delivery for a donation in 1073, reference is made to the "ἀννόνα ἀπὸ τῆς παραθέσεως" and the editor suggests that the παράθεσις could perhaps also mean deposit in the sense of keeping the thing safe (παρακαταθήκη / ἐναποθήκευσις); according to Nystazopoulou, in this act "ἀννόνα ἀπὸ τῆς παραθέσεως" means the yearly amount of corn that is kept at the time of the delivery of the immovable property. See Nystazopoulou, *Patmo*s, p. 28, note 18 referring to lines 119-120, no 50.

6.2.3. Investigating our case

6.2.3.1 *Depositum in sequestre* (μεσεγγύησις)?

Here is the abstract of the chrysobull of 1193 in which the emperor refers to the deposit:

(ἡ βασιλεία μου) ...καὶ δὴ τοὺς Γενουΐτας ἐγκρατεῖς εἶναι ἀφεῖσα τῶν λοιπῶν πραγμάτων αὐτῶν, ἀπόμοιραν ἐξ αὐτῶν λαμβάνει ὑπὸ ἐγγυηταῖς τοῖς παρ' αὐτῶν δοθεῖσι καὶ ὡς παρακαταθήκην τὴν τοιαύτην ἀπόμοιραν κατέχειν παρ' αὐτῆς ἐκλεγεῖσιν, εἰς χιλιάδας ὑπερπύρους εἴκοσι ποσουμένην, ἐπὶ αἱρέσει τοιαύτῃ, ὡς εἰ μὲν εἴδησιν λαβόντες τοῦ συμβάντος οἱ ἔποικοι τοῦ κάστρου Γενούας εἰς ἐκδίκησιν διεγερθεῖεν τοῦ πράγματος, ἀποδοθήσεται τούτοις ἡ κατασχεθεῖσα ἀπόμοιρα, εἰ δὲ ἀμελῶς περὶ ταύτην διατεθεῖεν, ἔσονται αἱ τοιαῦται εἴκοσι χιλιάδες ὑπέρπυροι παρὰ τοῖς Ῥωμαίοις εἰς ἱκάνωσιν τῶν πραγμάτων αὐτῶν.[791]

[and my Majesty] ...allowing the Genoese to keep the rest of their things, it receives part of them in the care of guarantors who have been given [by the Genoese] and have been chosen by my Majesty to hold this part as a deposit, which counts twenty thousand *hyperpyra*, under this condition that, if the inhabitants of the city of Genoa, when informed about the event, are roused into vindicating the matter, the portion held [by the guarantors] will be returned to them [to the Genoese]; if however they neglect to take care of this, these twenty thousand *hyperpyra* will be the property of the Byzantines as compensation for their goods.

What is rather problematic in this passage is the word "ἐγγυηταὶ". The preposition "ὑπὸ" is used here with the dative (ὑπὸ ἐγγυηταῖς) probably because what is expressed is that the money is already at that moment in the hands of the "ἐγγυηταί"; in other words the "ἐγγυηταί" received the money and it was "under their power."

Further on in the chrysobull, an oath is inserted which was sworn by the Genoese envoys who came to the capital to negotiate this matter. The emperor decided to give the money to the Genoese because the envoys promised that Genoa will take care of the matter and act against the pirates. The envoys confirmed in their oath amongst other things that they have received the money back from the Byzantine guarantors. The corresponding passage of the oath of the envoys follows:

[791] *MM*, vol. 3, p. 42, lines 6-15, no VII. See also the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 103, lines 17, 22-29, no 35: "(maiestas mea)...et sinens quidem Genuenses reliquas res suas servare, partem ex ipsis sumit sub vadibus ab iisdem datis et ab ipsa designatis ad detinendam tamquam depositum huiusmodi partem in *hyperpyrorum* viginti millia computatam. ea conditione ut si incolae civitatis Genuae eventus notitiam nacti ad facinoris vindictam excitarentur, reddenda esset iis deposita pars. si vero negligenter circa eam vindictam se se habuerint, erunt huiusmodi viginti millia *hyperpyrorum* apud Romanos in suarum rerum compensationem."

…πρὸ πολλοῦ οἱ τοιοῦτοι τοῦ κάστρου Γενούας ἀπεδιώχθησαν διὰ τὸν ἐκδεδιηγημένον αὐτῶν βίον καὶ τὴν ἐν οὐκ ἀγαθοῖς ἀναστροφὴν, καὶ ἐλάβομεν ἡμεῖς τὰ τοιαῦτα νομίσματα εἰς εἴκοσι χιλιάδας ὑπέρπυρα ποσούμενα ἀπὸ χειρῶν τοῦ Ὀξεοβαφεωπούλου Ἰωάννου εἰς τὰς ἡμετέρας χεῖρας καὶ δι' ἡμῶν οἱ ταῦτα τοῖς ἐγγυηταῖς παραθέμενοι Γενουῖται πραγματευταὶ οἱ καὶ τῇ Μεγαλοπόλει κατὰ τὸν νοέμβριον μῆνα τῆς διελθούσης ἐνδεκάτης ἰνδικτιῶνος κατ' ἐμπορίαν προσοκείλαντες μετὰ τοῦ πλοίου τοῦ Γενουΐτου Ἐρρίκου τοῦ Νεβιτέλα...[792]

...these [the Genoese who pillaged the ship and stole the goods] have been 'chased away' a long time ago from Genoa because of their degenerate way of life and their conversion towards evil, and we have received these coins, to the amount of 20.000 *hyperpyra* from the hands of Oxeobapheopoulos John into our hands and through us the money was handed to the Genoese merchants, who have deposited this [money] to the guarantors, who came ashore in Constantinople in the month of November of the past eleventh *indiction*, to trade with the ship of the Genoese Henricus Nebitella…

This case calls to mind one of the special forms of deposit, the *sequestratio*, or in Greek "μεσεγγύησις". In this instance, an amount of money was given to a third party by the emperor and the Genoese living in Constantinople under the following condition: if Genoa takes care of the matter of the Byzantine merchants who had suffered damage from the Genoese pirates, the third party will return the money to the Genoese living in Constantinople, if Genoa does not show interest in dealing with the problem, the third party will give the money to the Byzantine merchants. The fact that the deposited money is handed out in order to be kept safe, excludes the possibility that we are dealing with a *depositum irregulare*, such as a bank deposit, because in our case the depositees were not allowed to use the money and nothing is mentioned about interest.

The condition upon which the deposit is based is also confirmed some lines further on in the document. There the emperor explains that, after being informed of the news, Genoa immediately sent envoys to Constantinople. These envoys reassured the emperor that Genoa rejected the acts of the Genoese pirates and had expelled them, and that the Genoese would not stop chasing these pirates until they captured them and once found, they would be presented before the emperor:

...στέλλουσι δὲ καὶ ἀποκρισαρίους πρὸς τὴν βασιλείαν μου περὶ τούτων διαπρεσβεύοντες, τόν τε πιστότατον λίζιον αὐτῆς Βαλδουῖνον Γέρτζον[793] καὶ τὸν Γίδον Σπίνουλον, οἳ καὶ

...and they also sent envoys to my Majesty to negotiate about these [issues of compensation and deposit], the most faithful vassal of my Majesty Baldovino Guercio and Guido Spinula, who

[792] *MM*, vol. 3, p. 44, lines 11-19, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 105, lines 17-24, no 35.

[793] For more on Baldovino Guercio, see Gastgeber, *Übersetzungsabteilung*; vol. 3, no 29, p. 202, commentary, line 2.

καταλαβόντες πρὸς τὴν βασιλείαν μου καὶ πολυτρόπως αὐτὴν πληροφορήσαντες τὸ τῶν τὸ ἄτοπον τοῦτο ἔργον ποιησαμένων Γενουιτῶν ἀπόβλητον καὶ ἐκδεδιητημένον καὶ τὴν διὰ ταῦτα πολὺν ἤδη χρόνον τῆς Γενούας ἀποικίαν καὶ τὸν ἀπὸ τοῦ κάστρου αὐτῶν ἔνδικον διωγμόν, καὶ ὡς οὐδέποτε λήξουσιν ἀναψηλαφῶντες αὐτοὺς, μέχρις ἄν κατασχόντες τούτους ταῖς χερσὶ τῆς βασιλείας μου παραδώσουσι,...[794]

approached my Majesty and informed us in many ways that the Genoese have condemned and reprobated this absurd incident and that for those reasons these Genoese were banished from Genoa a long time ago and that were legally expelled from their city and that they will never stop searching for them until they seize them and deliver them to the hands of my Majesty.

In their oath, the Genoese envoys confirm that Genoa has expelled the pirates because of their acts; there the verb "ἀπ-εδιώχθησαν" was used by the envoys, which is related etymologically to the noun "διωγμός".[795] It seems doubtful whether, based on the term "ἔνδικος διωγμός", one can conclude that the Genoese would have brought those who pillaged the ship to trial in Genoa. This term indicates that the Genoese have expelled the pirates who have pillaged the ship carrying the Byzantines. What is clear is that the city of Genoa will do its utmost to locate the Genoese pirates and bring them to the Byzantine capital. This corresponds to 'the legal co-operation' between Genoa and Byzantium for finding the wrongdoers and dispensing justice, something that has been regulated between both sides in the past.[796]

How sincere, however, the intention of Genoa was in pursuing the pirates and bringing them before the emperor is highly questionable. It is significant not only that the identity of the Genoese who attacked the ship carrying the Byzantine envoys and merchants was known but also that the names of the Genoese who pillaged the ship are actually mentioned in this chrysobull. It is also remarkable that one of these Genoese pirates is actually a nephew of the official Genoese envoy, Baldovino Guercio, who has been sent by Genoa to negotiate with the emperor. His name is Vaca Buba and it is

[794] *MM*, vol. 3, p. 42, lines 24-32, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 104, lines 1-9, no 35: "...mittunt vero legatos ad maiestatem meam de his rebus tractaturos, fidelissimum nempe vassallum ipsius Balduinum Guercium et Guidonem Spinulam, qui quum adiissent, maiestatem meam et multifariam ipsi satisfecissent, turpe illud facinus existimantibus Genuensibus rejectum et damnatum et propterea multo abhinc tempore fugam indictam a Genua et a civitate eorum iudicialem persecutionem, nunquam vero cessanturos ab iis insectandis, donec comprehensos in manus maiestatis meae tradiderint:.."

[795] "..ὡς πρὸ πολλοῦ οἱ τοιοῦτοι τοῦ κάστρου Γένουας ἀπεδιώχθησαν διὰ τὸν ἐκδεδιητημένον αὐτῶν βίον καὶ τὴν ἐν οὐκ ἀγαθοῖς ἀναστροφὴν..." in *MM*, vol. 3, p. 44, lines 11-13, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 105, lines 17-19, no 35: "…sicut a multo tempore illi a civitate Genuae abacti fuerant propter degenerem ipsorum vitam et non bonam conversionem…".

[796] See, for example, Reg. 1488 in chapter IV,1.2.2.

mentioned that he is a nephew ("ἀνεψιός" in the Greek text[797] and *nepos* in the Latin translation[798]) of Baldovino Guercio. This information is also mentioned in a previous act of Isaac II Angelos, in a letter addressed to Genoa in 1192.[799]

At this point, I would also like to add an observation relevant to the position of the emperor regarding the pillage of the ship by some Genoese. As I have mentioned earlier, the Genoese pirates who pillaged the ship also stole gifts that were on the ship that were sent by the Egyptian sultan to the Byzantine emperor. However, in this document the emperor arranges for the compensation of the Byzantine merchants who had suffered damage. He does not refer to the gifts that were stolen nor does he ask compensation for these goods from the Genoese. From what is mentioned in the chrysobull, it is evident that the emperor asked the Genoese living in Constantinople to pay an amount of money, which is described as deposit, *because* the Byzantine merchants were protesting their loss. Actually, as I have mentioned earlier, it was the Byzantine merchants who had asked the emperor to claim from the Genoese in Constantinople compensation for their loss.[800] This information combined with the fact that in the end, no compensation was actually paid to the Byzantine merchants[801], shows that the position of the emperor is rather weak in his negotiations with Genoa in this period.

Another interesting point in this document is the information that the money for the deposit is handed over to a third party, a Byzantine subject named John Oxeobapheopoulos (or perhaps to him and others because reference is also made in the act to "ἐγγυηταί" in plural who keep the money). Instead of using a term expressing the depositess, like "παραθηκάριοι" for example, the term "ἐγγυηταί" is mentioned in the chrysobull. This is another argument in favour of the fact that we are dealing with a kind of "μεσεγγύησις". If Oxeobapheopoulos (or himself and others if there are more than him) belong to the group of merchants who suffered from the attacks of the Genoese, and thus, are in reality some of the creditors, then the whole

[797] See *MM*, vol. 3, p. 44, line 7, no VII.

[798] See *Cod. Dipl. Genova*, vol. III, p. 105, lines 14-15, no 35.

[799] Reg. 1612.

[800] See *MM*, vol. 3, p. 41, lines 20-23, no VII. The envoys state that the Genoese living in Constantinople deposited the money because of the damage caused to the empire and to the Byzantine merchants and because of the murder of the Byzantine envoys on the ship and because of the loss of gifts that were addressed to the emperor by the Sultan of Egypt: "…παρατεθέντα αἰτίᾳ τῆς γεγονυίας ζημίας τῇ ἁγίᾳ αὐτοῦ βασιλείᾳ καὶ τοῖς Ῥωμαίοις πραγματευταῖς καὶ τοῦ φόνου τῶν ἀποκρισαρίων [..] καὶ τῆς ἁφαιρέσεως τῶν φαρίων καὶ ἄλλων αἰγυπτιακῶν ζώων…." in *MM*, vol. 3, p. 43, lines 30-35, no VII. The emperor, however, does not mention that the deposit was given for the loss that his empire suffered (the murder of the envoys and the loss of the gifts) but that it was made because of the damage suffered by the Byzantine merchants.

[801] According to the present act, the Genoese envoys who arrived in the Byzantine capital and negotiated with the emperor promised on behalf of Genoa that the city would turn against the Genoese who pillaged the ship, yet nothing is mentioned about compensation paid to the Byzantine merchants.

construction also reminds one of a *pignus* contract: money is given to representatives of the Byzantine merchants as security in case they are not compensated by Genoa for the damage that they have suffered from the Genoese pirates. Yet it seems rather unlikely that the emperor would have handed the deposited money to one of the parties that was involved, in this case the merchants who had suffered damage. If the emperor had ordered that these merchants be entrusted with the deposited money paid by the Genoese living in Constantinople, it seems difficult to believe that they would have handed it back if Genoa had not paid compensation to them.

Oxeobapheopoulos must have been someone respected and trusted by the emperor and must have come from a wealthy environment for he had to be in a position to keep this large amount of money safe.[802] Oxeobapheopoulos must not have been someone from the imperial environment or some Byzantine official because reference is made only to his name and no title or function is mentioned. Up to this point, we have seen in our acts that names of Byzantine officials are accompanied by their titles or reference is made to their status.[803]

Moreover in the chrysobull of 1193, reference is made to multiple people who are able to hold the money, who are characterised as guarantors (ἐγγυηταί) and this is mentioned more than once.[804] So it seems that there was not one depositee, but more persons of whom Oxeobapheopoulos was one. We saw earlier that according to Roman and Byzantine law, in the case of *sequestratio* there are more depositors. Therefore, in our case it could be that both the emperor and the Genoese living in Constantinople are the depositors and they have both agreed to hand over the money to Oxeobapheopoulos. In the passage quoted above, in which the envoys certify that they have received the money from Oxeobapheopoulos, the Genoese resident in Constantinople are mentioned as the depositors (οἱ παραθέμενοι Γενουῖται πραγματευταὶ).[805]

However, it was by order of the emperor that the Genoese living in Constantinople had to pay the deposit. It is the emperor who orders the collection of money from the Genoese, which is then given to one or more persons (as mentioned earlier) for safe-keeping. In other words, in this instance, the money is given as a deposit *not by the free will* of the Genoese in Constantinople, but as a result of an order given by the emperor. Nevertheless, what is here described is no confiscation since the emperor acts here more like

[802] Laiou mentions that the name John Oxeobapheopoulos is clearly connected to the marketplace because his name means "red purple dyer" but she adds that "it is impossible to determine whether he was a silk manufacturer or a silk merchant or whether this was a family name" in Laiou, *Byzantine trade*, p. 177.

[803] For example, in the chrysobull of 1192 by Isaac II Angelos to Genoa (Reg. 1609), Demetrios Tornikes is mentioned as *logothetes tou dromou*. In the same act, Constantine Pediadites is referred as the *grammatikos* (an imperial secretary); Constantine Petriotes is mentioned as "δεσιμώτατος", the latter being possibly a judge.

[804] See for example *MM*, vol. 3, p. 42, line 7, p. 43, line 4 and lines 29-30, no VII.

[805] See *MM*, vol. 3, p. 44, line 16, no VII.

a judge might in a *sequestratio*.

Regarding the content of the order given by the emperor, there is another problematic point in the reading of the document. This is found in a part of the oath taken by the Genoese envoys. They promise on behalf of Genoa that their city will observe all agreements with the Byzantines and will never use the detention of the Genoese living in Constantinople and the deposit of their things to guarantors as a reason to break those agreements.[806] The word "κατάσχεσις" which is used here and is translated in the Latin text as *detentio* raises some questions. From the context of this abstract, it is clear that the word "κατάσχεσις" does not refer to things (πράγματα), but to people, i.e. the Genoese living in Constantinople. Therefore, the word "κατάσχεσις" can probably be explained as an arrest of the Genoese living in Constantinople; or perhaps better, as a kind of detention whereby the Genoese living in the capital were not permitted, for example, to leave the city but 'were taken into custody'.[807]

If the emperor had also ordered a similar detention for the Genoese in Constantinople,[808] it is strange that this detention (or arrest) is mentioned for the first and only time here. Earlier in the act the emperor mentions something that perhaps could be related to the restriction of the Genoese living in Constantinople. After stating that the Genoese living in the Byzantine capital paid 20.000 *hyperpyra* as a deposit, it is mentioned:

...καὶ ὁ θόρυβος καταστέλλεται, καὶ οἱ Γενουῖται τῇ Μεγαλοπόλει ἐλευθέρως καὶ αὖθις ἐνδιατρίβουσι, τοῖς ἀποκληρωθεῖσιν αὐτοῖς ἐν τῇ Μεγαλοπόλει διαιτήμασιν ἀνέτως χρώμενοι.[809]

...and the fuss was calmed down[810] and the Genoese in Constantinople freely carried on again using without constraint the districts that were preserved by them in Constantinople.

[806] "(ὀμνύομεν).. καὶ οὐδὲν πρόκριμα τῷ κάστρῳ καὶ τῇ χώρᾳ ἡμῶν πρὸς ἀναίρεσιν τῶν συμφωνηθέντων, ὡς εἴρηται, ἐκ τῆς τῶν ἐν τῇ Μεγαλοπόλει κατασχέσεως καὶ τῆς τῶν πραγμάτων αὐτῶν παρ' ἐγγυηταῖς καταθέσεως προσγενήσεται εἰς τοὺς ἑξῆς ἅπαντας καὶ διηνεκεῖς χρόνους…" in *MM*, vol. 3, p. 45, lines 3-7, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 106, lines 6-10, no 35: "et nullum praeiudicium fiet civitati et regioni nostrae ad violationem pactorum, sicut dictum est, ex Genuensium Constantinopoli degentium retentione et rerum ipsorum apud sponsores depositione in omnes deinceps et perpetuos annos".

[807] The word "κατάσχεσις" could mean "detention", "imprisonment" or "arrest", see Kriaras, *Lexicon*, vol. VIII, 1982, p. 62.

[808] This practice would not have been unusual for Byzantium. Recall the order of emperor Manuel I Komnenos in 1171 to arrest all Venetians within the empire and confiscate their goods. Niketas Choniates, who describes this incident, uses the word "κατάσχεσις": "γράμματα ἐφοίτων κατὰ πᾶσαν ἐπαρχίαν Ῥωμαϊκὴν τὴν τῶν Βενετικῶν κατάσχεσιν ἐπιτείνοντα καὶ τὴν ἡμέραν διασημαίνοντα, καθ' ἣν ἔδει τοῦτο γενέσθαι καὶ τὰ ἐκείνων ἐσεῖσθαι δημόσια χρήματα" in Nik.Chon., p. 171, lines 61-64.

[809] *MM*, p. 42, lines 15-18, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 103, lines 30- 32, no 35.

[810] He refers here to the Byzantine merchants who became increasingly angry.

Some lines further on, after reassuring the emperor that they will observe the agreements with him and will not refer to this incident again, the envoys mention:

...ὡς καὶ τοῦ κυρίου βασιλέως καὶ τῆς Ῥωμανίας κατανεύσαντος διὰ τοῦ γεγονότος νῦν αὖθις ἡμῖν προσκυνητοῦ χρυσοβούλλου τῆς ἁγίας αὐτοῦ βασιλείας μηδέποτε ἀπὸ τοῦ νῦν ἐν κατασχέσει τινὸς[811] τῶν Γενουϊτῶν γενέσθαι, μήτε διὰ τὴν τοιαύτην αἰτίαν, μήτε δι' ἑτέραν οἱανδήτινα μερικὴν ζημίαν ἢ βλάβην τῇ Ῥωμανίᾳ ἢ τινὶ τῶν ἐποίκων αὐτῆς εἰς τὸ ἑξῆς ἐπενεχθησομένην παρὰ τινων Γενουϊτῶν πρὸ τοῦ δοῦναι εἴδησιν τῷ κάστρῳ Γενούας καὶ ἐξ ἐκείνου τὴν ἐκδίκησιν ἀπαιτῆσαι, καθώς ἀρχῆθεν συνεφωνήθη...[812]

...because also the emperor and Romania has again agreed by the present, again venerable chrysobull of his Holy Majesty, that no Genoese will be from now on arrested for this reason nor for any other kind of partial damage or harm caused to Romania or to some of her subjects, made by some Genoese, before notification is made to Genoa and legal remedy is requested from Genoa, as it was originally agreed.

The envoys state that from now on, the emperor will not arrest Genoese for this reason (meaning the pillage of the ship by the Genoese pirates and what followed), nor for other damage caused to the empire by Genoese. From the way this passage is phrased, it seems that there was an arrest (or detention) of the Genoese ordered by the emperor. The envoys in this text also refer to a former agreement with the emperor by which he must notify the city of Genoa every time a Genoese causes harm to the empire or someone within it, and he must additionally ask for legal remedy from the city of Genoa.

By examining former acts between Byzantium and Genoa, we come across a provision in the chrysobull by emperor Manuel I Komnenos, which should be the provision that the Genoese envoys refer to here as a former agreement with the Byzantines (καθὼς ἀρχῆθεν συνεφωνήθη):

Si vero contigerit Ianuenses aliquos depredari aliquando vel aliter ledere aliquam terram domini Imperatoris vel homines eius, dabitur super hoc

If however, some Genoese harms someone either from the territory of the *kyr* emperor or his men, this has to be reported to the city of Genoa by the

[811] The word "τινὸς" is strange; it should have been "τινὰ"; the Latin translation seems better here.

[812] *MM*, vol. 3, p. 45, lines 18-25, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 106, lines 21-29, no 35: "..., domino imperatore et Romania adnuente per reverendum chrysobulum sacrae ipsius maiestatis nunc nobis rursus concessum, numquam ex hoc tempore procedendum erit ad detentionem alicuius Genuensis neque propter hanc causam, neque propter aliud quodcumque partiale damnum vel iniuriam quae ab aliquo Genuensium afferri posset in posterum Romaniae vel cuicumque habitantium illius, antequam detur notitia civitati Genuae et ab ea exposcatur vindicta, sicut antiquitus concordatum fuerat".

noticiam Ianue civitati ab Imperatore sive per literas sive per nuncium, et dabunt operam sine dolo et fraude invenire eos et facere ex eis iusticiam et vindictam ad honorem domini Imperatoris spectantem... [813]

emperor either by letters or by a messenger and they have to act without deceit and fraud and serve justice and retribution for the honour of the *kyr* emperor.

The above passage is part of the oath of the Genoese envoy Amico de Murta. A Greek version of this oath is inserted in the chrysobull by Isaac II Angelos,[814] which is preserved both in Greek and in a Latin translation. While it does not appear word for word, the content is the same.

...καὶ ἐάν τις Γενουίτης ποιήσῃ πταῖσμα τῇ βασιλείᾳ αὐτοῦ ἢ τοῖς ἀνθρώποις τῆς βασιλείας αὐτοῦ, οἱ κόνσουλοι τῆς Γένουας μετὰ καλῆς πίστεως ἵνα ἔχωσι χρέος ποιῆσαι δίκαιον μετὰ τὸ λαβεῖν εἴδησιν παρὰ τοῦ κυρίου βασιλέως... [815]

...and if some Genoese harms His Majesty or people of His Majesty, the consuls of Genoa are obliged to adminster justice with good faith after they are notified by the lord emperor.

It is plausible therefore, that the "former agreement" referred to in the chrysobull of 1193 (by which the emperor has to notify Genoa everytime a Genoese harms the empire or some person within her terrritory), is the same as the provision included in Manuel's chrysobull of 1169,[816] which is repeated in the chrysobull of Isaac II Angelos[817]. To conclude, regarding the deposit mentioned in this act, it seems that the 'legal construction' is similar to a *depositum in sequeste* (μεσεγγύησις).

[813] *Cod. Dipl. Genova*, vol. II, p. 109 (version Q), lines 25 - p. 110, line 2, no 50. This chrysobull (Reg. 1488, year 1169) has been preserved only in Latin.
[814] Reg. 1609, year 1192.
[815] *MM*, vol. 3, p. 34, lines 21-24, no V; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 60, lines 12-15, no 21; This passage has been discussed earlier, see i. The chrysobull of Manuel Komnenos in 1169 (Reg. 1488) in chapter IV, 1.2.2.
[816] Reg. 1488.
[817] Reg. 1609.

6.2.3.2 Discharge of the obligation

In their oath, the two Genoese envoys clearly state that they have received the deposited money from a man named John (Ioannes) Oxeobapheopoulos. This is the first and only time in the act that his name is mentioned. The Genoese envoys refer to the depositee in person, probably because in doing so they acknowledge that he has performed his task correctly. Firstly, the Genoese are under oath here, and secondly, this oath has been administered according to special formalities: it has been recorded and the Genoese envoys have fixed their signatures to the document. Thus, this document serves as evidence that the Genoese have received the money from the depositee. The liability of the depositee ends here, and it is crucial to name him to ensure that everything has been performed as it should (for example, that the amount of money is correct etc…). That this document serves as proof can be also supported by the following three arguments. Firstly, the Genoese envoys clearly state when they received the money.[818] Secondly, they certify that they have received the whole amount and that they do not doubt this.[819] Thirdly, they reassure the Byzantine side that they will not use any excuse whatsoever in order to avoid applying what is agreed by this chrysobull.[820] Later in the document, it is mentioned once again, and rather extensively, that the envoys promise (always on behalf of all the Genoese), that they will never recall this incident again as an excuse to reject parts of the agreements with the emperor. This is repeated yet again further on in the document.

[818] "...κατὰ τὸν νοέμβριον μῆνα τῆς διελθούσης ἐνδεκάτης ἰνδικτίωνος…" in *MM*, vol. 3, p. 44, line 17, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 105, line 23, no 35: "…mense novembri praeteritae indictionis undecimae…".

[819] "…ταῦτα οὕτως ἐλάβομεν, καὶ ἀναργυρίαν προβάλεσθαι οὐκ ἔχομεν μερικῶς ἢ καθόλου" in *MM*, vol. 3, p. 44, lines 19-20, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 105, lines 24-26, no 35: Quoniam igitur haec sic accepimus et pecuniae privationem praetexendi [it should read "praetextendi" I think] causam non habemus partialiter vel omnino.

[820] "…οὔτε μὴν ἑτέρα τις πρόφασις ἡμῖν ὑπολέλειπται εἰς ἀναίρεσιν τῶν συμφωνηθέντων παρὰ τοῦ καθ' ἡμᾶς κάστρου καὶ τῆς χώρας τῆς Γενούας πρὸς τὸν κραταιὸν καὶ ἅγιον ἡμῶν βασιλέα, κῦρ Ἰσαάκιον τὸν Ἄγγελον..." in *MM*, vol. 3, p. 44, lines 20-23, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 105, lines 26-29, no 35: "neque sane alius praetextus nobis relinquitur ad abrogationem pactorum inter nos pro civitate et regione Genuae et potentem sanctumque nostrum imperatorem dominum Isaacium Angelum…".

6.2.3.3 Legal terminology

The terms "παρακαταθήκη" and "παραθέμενος" that are used respectively to describe a deposit and a depositee in Byzantine law, are used in the chrysobull of 1193. For the money that has been deposited, the word "παρατεθέντα" is used.[821] As I have already mentioned, the deposit described in our act reminds us of the deposit *in sequestre*, which, in Byzantine law, was referred to as "μεσεγγύησις." The fact that the word "μεσεγγύησις" is not mentioned in our document, does not raise any problems in describing the deposit as a sequestration, since the sequestration-deposit is a special kind of deposit and so, the word "παρακαταθήκη" can also include the "μεσεγγύησις". Moreover, the fact that the word "ἐγγυηταί" is used to describe the persons with whom the Genoese have deposited the money rather than the word "παραθηκάριοι", could be another argument in favour of a deposit-sequestratio (μεσεγγύησις), since the word "ἐγγυηταί" is related etymologically to the word "μεσ-εγγύησις" rather than the word "παρακαταθήκη." We saw earlier that in their oath, the Genoese envoys swore that they received the money from Oxeobapheopoulos and that they have no intention of doubting this (καὶ ἀναργυρίαν προβαλέσθαι οὐκ ἔχομεν μερικῶς ἢ καθόλου).[822]

This expression reminds us of what is known in Roman law as the exception of *non-numeratae pecuniae* by which the debtor objects that he has not received the money for which he was sued. This exception was created for the debtor who had promised (by a *stipulatio*) to pay back an amount but this amount had not been yet given to him.[823] The most important result of this exception was that it put the burden of proof that the money had not been paid upon the plaintiff. Justinian reduced the time of prescription of the *exceptio non numeratae pecuniae* from five to two years. According to the *Codex*, because some litigants tried to use this exception against receipts referring to the deposit of property or money, the emperor considered it right and fair to abolish this exception in some cases and, in other cases, to reduce it to a very short time.[824] One of the cases in which the emperor abolished this exception

[821] *MM*, vol.3, p. 43, line 4 and line 30, no VII.

[822] *MM*, vol. 3, p. 44, lines 19-20, no VII and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 105, lines 25-26, no 35: "...et pecuniae privationem praetexendi [it should read "praetextendi" I think] causam non habemus partialiter vel omnino...".

[823] Kaser, *Römisches Privatrecht*, p. 442 and Zimmermann, *Obligations*, p. 93. It seems that such a practice was not uncommon. Actually, at the time of the classical jurists it was common that a borrower of money would give the lender an acknowledgement that he had received the money in writing and this document was called *cautio*. In cases in which the defendant had given such a document without having, in fact, received the money, he could defend himself with the "exceptio doli" or the "exceptio non numeratae pecuniae".

[824] C. 4,30,14,1: "Sed quoniam securitatibus et instrumentis depositarum rerum vel pecuniarum talem exceptionem opponere litigatores conantur, iustum esse prospicimus huiusmodi potestatem in certis quidem casibus prorsus amputare, in aliis vero brevi tempore

was the case of documents of deposit.[825] These provisions of the Justinianic Code have been transmitted in the *Basilica*[826] and a corresponding summary by Theodore has also been preserved, in which he states that the *exceptio non numeratae pecuniae* is not applied for deposits.[827] In another comment of the *Basilica*, we read that the *exceptio non numeratae pecuniae* is not applied in three cases, one of which is the deposit.[828] In the chrysobull of 1193 that is examined here, the Genoese envoys state that they will not bring the exception of not having received the money from the guarantors. In our document, the construction used is described as deposit and we saw that in Byzantine law the *exceptio non numeratae pecuniae* is not applied in a deposit. The Genoese envoys are not the depositees. It seems therefore unlikely that they state that they do not have the *exceptio non numeratae pecuniae* because it is a case of deposit. What the Genoese envoys state here is that they will not use the *exceptio* because they have received the money; in other words, they confirm that the amount given to them is correct and that they will bring no claims whatsoever in the future concerning this money.

concludere". (Translation from *AJC*: "And since litigants attempt to interpose such defense to vouchers and intruments evidencing deposits of certain property or money, we seem it proper to entirely take away the right to do so in certain cases, and to limit such right in other cases to a short time.")

[825] The other two cases referred to public receipts and receipts from dowries; C. 4,30,14,1: "Ideoque sancimus instrumento quidem depositionis certarum rerum vel certae pecuniae securitatibusque publicarum functionum, sive in solidum sive ex parte solutae esse conscribantur, illis etiam securitatibus, quae post cofectionem dotalium intrumentorum de soluta dote ex parte vel in solidum exponuntur, nullam exceptionem non numeratae pecuniae penitus opponi." (Translation from *AJC*: "We therefore ordain that no defense of money not delivered can be set up against a document evidencing a deposit of definite things or of definite amounts of money, or against vouchers for public dues, whether they acknowledge delivery in full or in part, or against vouchers which, after the execution of dowry documents, acknowledge the delivery of the dowry in whole or in part." See also Cimma, *Non numerata*, p. 172.

[826] B. 23,1,76 = C. 4,30,14 (BT 1111/16- 1112/14).

[827] BS 1609/29-30 (sch. Pa 1 ad B. 23,1,76 = C. 4,30,14): "Ἐπὶ παραθηκαρίᾳ οὐχ ἁρμόζει ἡ τῆς ἀναργυρίας παραγραφή."

[828] BS 1613/17-18 (sch. Pa 31 ad B. 23,1,76 = C. 4,30,14): "Σημείωσαι, ὅτι ἐν τρισὶ θέμασιν ἡ ἀναργυρία οὐ δίδοται· ἐν παρακαταθήκῃ, ἐπὶ δημοσίων [χρε]ῶν καὶ ἐπὶ ἀπολη̣πτικῆς ἐν προικὶ ἐκτελεσθείσης".

6.2.3.4 Liability of the Genoese living in Constantinople and *ius represaliarum*

The Genoese living in Constantinople were held liable for the unlawful acts committed by other Genoese. In other words, the Genoese in the Byzantine capital were held liable because of their nationality, which strongly reminds us of what is known as the *ius represaliarum* (*represalia*) that was applied in medieval Europe. An example of this principle follows: if someone had a claim against a debtor from a foreign country, he could request payment from another person coming from the same country as the debtor, provided the debtor himself did not pay. If this person paid the debt (of the primary debtor) he could ask the primary debtor for the money back. The *ius represaliarum* was applied to liability in dealing with debts and damages that had been made by persons of the same nation and it therefore corresponded to a form of collective liability.[829] Exceptions from the *ius represaliarum* were awarded to pilgrims and merchants at fairs.[830] Another known exception from this *ius represaliarum* was given to students in the area of Bologna by the *authentica Habita* by Frederick I Barbarossa in 1158.[831]

In our case, the Genoese living in Constantinople gave an amount of money, which was held as deposit, subject to certain conditions, because of unlawful acts committed by their fellow-country men. The Genoese in the Byzantine capital had nothing to do with the pillaging of the ship that carried the Byzantine merchants. Yet, they were asked, by order of the emperor, to pay the deposit and, in this way, they ran a risk with their own property; moreover, according to my interpretation of the term "κατάσχεσις", there was most likely something like a house-detention ordered against them. What is described in our case does not correspond entirely to the *ius represaliarum* because in our case the payment of the money as a deposit is ordered by the Byzantine emperor. It is not the creditors, or rather in this case, the people who have suffered damage from the Genoese (namely the Byzantine merchants), who ask for compensation directly from the Genoese living in the Byzantine capital, but rather the emperor, who ordered the Genoese in Constantinople to pay the deposit that is made in favour of these Byzantine merchants. On the other hand, the emperor takes such a measure upon a request of the Byzantine merchants who want to be compensated for their losses. Hence, in a way the emperor acts like a judge. Finally, in any case, the *ratio* in our case is the same as in the *ius represaliarum*: the Genoese in Constantinople must pay the money in the form of a deposit as a security because of their *nationality*; their liability is

[829] See Ullmann, *Law*, pp. 93ff. and Koeppler, *Barbarossa*, p. 595.
[830] See the entry "repressalien (recht)" in *Lexikon des Mittelalters*, vol. VII, p. 746; Koeppler, *Barbarossa*, pp. 595ff.
[831] See Koeppler, *Barbarossa*, pp. 577-607; Rashdall, *Universities*, pp. 143-45 and pp. 180-821; Lokin and Zwalve, *Hoofdstukken*, pp. 113-14; About the *Constitutio Omnem* and the *Authentica Habita*, see also Van der Ven, *Academierechtspraak*, pp.70-78.

based on the fact that they have the *same nationality* as the persons that have caused damage to Byzantine subjects.

6.2.4 Making the treaty

The emperor explains that he grants the chrysobull because the envoys and the Genoese living in Constantinople have confirmed the agreement by their signatures and by a corporal oath:

...ἐπεὶ δὲ διὰ τὸ παρεμπεσὸν σκάνδαλον καὶ ἑτέρῳ χρυσοβούλλῳ τῆς βασιλείας μου τὸν προαπολυθέντα ἐπὶ τῇ συμφωνίᾳ αὐτῶν χρυσόβουλλον λόγον τῆς βασιλείας μου ἐπικυρωθῆναι ᾐτήσαντο, κατανεύει καὶ πρὸς τὴν τοιαύτην αὐτῶν ἡ βασιλεία μου αἴτησιν, ὡς καὶ αὐτῶν ἐγγράφῳ αὐτῶν καὶ τῶν ἐν τῇ Μεγαλοπόλει ἐκκρίτων Γενουιτῶν ἐνυπογράφῳ καὶ ὅρκῳ σωματικῷ ἐπὶ τῷ ἐγγράφῳ τὴν προομοθεῖσαν συμφωνίαν αὐτῶν ἐνταῦθα ἐπικυρωσάντων κατὰ τὸ ἐνδεδομένον αὐτοῖς ἀπὸ τῆς χώρας αὐτῶν, καθ' ἣν τῇ βασιλείᾳ μου διεκόμισαν γραφὴν τῶν κονσούλων καὶ συμβούλων τοῦ κάστρου αὐτῶν, συμφωνησάντων δὲ καὶ τὸ ἐν τῇ ἐναλλαγῇ τῶν κουνσούλων καὶ συμβούλων αὐτῶν ἢ καὶ ἐξουσιαστῶν τοὺς ἑκάστοτε γινομένους ἑτέρους κονσούλους καὶ συμβούλους ἢ καὶ ἐξουσιαστὰς προτιθέναι τῷ ἐπὶ ταύτῃ ὅρκῳ καὶ τοῦτο τὸ μηδὲ διὰ τὸ συμβὰν μερικὸν σκάνδαλον μεταξὺ τῆς Ῥωμανίας καὶ τῆς Γενούας ὁτεδήποτε ἀλλοίωσιν ἐμποιῆσαι τοῖς μετὰ τῆς Ῥωμανίας καὶ τῆς Γενούας συμφωνηθεῖσι.[832]

…and because due to the scandal that has occurred, they asked for a confirmation by a new chrysobull of my Majesty that was issued on the base of their agreement, my Majesty also consents to this request by them, because they have also confirmed here [in Constantinople] the previously promised agreement by a document signed by them and the leaders of Genoese in Constantinople and by a corporal oath on the document, by virtue of the mandate given to them by their country, [according to] the letter of the consuls and counsellors of their city which they have brought to my Majesty, and because they have also agreed that, in case of a change of their consuls and counsellors or *podestà*, each time the new consuls and counsellors or *podestà* will put before their oath about this [about their new office] also the following: that they will never, because of the partial incident that occurred between Romania and Genoa, cause any alteration to what has been agreed between Romania and Genoa.

[832] *MM*, vol. 3, p. 43, lines 7- 21, no VII and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 104, lines 18-32, no 35: "quoniam vero ob interlapsum scandalum irritum evaserat chrysobulum maiestatis meae super conventione, petierunt ut per aliud maiestatis meae diploma confirmaretur, indulget maiestas mea etiam huic ipsorum petitioni, et quum per suam scripturam, perque suam et praecipuorum Genuensium Constantinopoli degentium subscriptionem et corporale iuramentum super scriptura, conventionem antea iuratam confirmaverint, iuxta quod ipsis mandatum fuerat a regione eorum, iuxta eam quam maiestati meae detulerunt scripturam consulum et consiliarorum civitatis ipsorum, consentientibus in pactionis vicissitudine consulibus et consiliariis ipsis et etiam potestatibus

We are informed from this passage that the envoys have brought with them a letter (διεκόμισαν γραφὴν) certifying their mandate from the authorities of Genoa (κατὰ τὸ ἐνδεδομένον αὐτοῖς ἀπὸ τῆς χώρας αὐτῶν), namely that they are in a position to negotiate and conclude a treaty on behalf of the city of Genoa. The former agreement is ratified by the signing of the agreement and the promise made by a corporal oath. In this case, both the envoys and the Genoese living in Constantinople sign and swear the oath. The formalities of the ratification of the agreement by an oath and by signatures are mentioned once again.[833] There is some other interesting information in this act which sheds some light on how the treaties between the Byzantine emperor and the Italian cities were made. In the oath of the Genoese envoys it is mentioned:

…ἐπεὶ οὖν (…) οὔτε (…) τις πρόφασις ἡμῖν ὑπολέλειπται εἰς ἀναίρεσιν τῶν συμφωνηθέντων (…) τῶν καὶ δι' ἐγγράφου ὁρκωμοτικοῦ ἡμῶν καὶ χρυσοβούλλου τῆς ἁγίας αὐτοῦ βασιλείας, ἐν ᾧ καὶ τὸ τοιοῦτον ἔγγραφον κατεστρωμένον ἐστί, δηλουμένων, ᾧ ἐγγράφῳ ἀκολούθως καὶ οἱ κόνσουλοι τοῦ κάστρου ἡμῶν καὶ οἱ λοιποὶ ἔκκριτοι τῶν συμφυλετῶν ἡμῶν τὴν πρὸς τὸν κραταιὸν καὶ ἅγιον βασιλέα Ῥωμαίων κῦρ Ἰσαάκιον τὸν Ἄγγελον, καὶ πρὸς αὐτὴν τὴν Ῥωμανίαν πίστιν ἐπωμόσαντο πρὸς τοὺς ἐκεῖσαι ἀποσταλέντας ἀποκρισαρίους τῆς ἁγίας αὐτοῦ βασιλείας, τόν τε Πεπαγωμένον Νικηφόρον καὶ τὸν διερμηνευτὴν Γηράρδον,[834] ὀμνύομεν, ἵνα πάντα τὰ παρὰ τοῦ κάστρου καὶ τῆς χώρας ἡμῶν συμφωνηθέντα καὶ ἐν τῷ χρυσοβούλλῳ διειλημμένα καὶ τῷ ἐν αὐτῷ κατεστρωμένῳ ἐγγράφῳ ἡμῶν δηλουμένα ὡς συμφωνηθέντα παρὰ τοῦ αὐτοῦ

…since we have no more reason to annul what we have agreed and which is also declared by our act of oath and by the chrysobull of his holy Majesty, in which [chrysobull] also this act has been written down, according to which act the consuls of our city and the rest of the leading people of our fellow citizens have sworn loyalty to the powerful and holy emperor of the Romans, *kyr* Isaac Angelos and to Romania to the envoys of it that were sent there, namely Pepagomenos Nikephoros and the interpreter Gerardo, we swear, that everything that has been agreed to by our city and country and incorporated in the chrysobull and everything that has been declared in our act that has been written down in the chrysobull, as agreed by the city and our country, will be observed intact and unchanged...

quod quandoque existentes alii consules et consiliarii vel etiam potestates apponent iuramento super hanc conventionem etiam hoc quod nunquam, per illapsum partiale scandalum inter Romaniam et Genuam, mutationem inducent iis quae inter Romaniam et Genuam concinnata fuere.".

833 "...ταῦτα οὕτω τούτων καταθεμένων ἐνώπιον τῆς βασιλείας μου καὶ τὴν τοιαύτην αὐτῶν κατάθεσιν πιστωσαμένων δι' ἐγγράφου ἐνυπογράφου αὐτῶν καὶ ὅρκου οὕτως ἐχόντων·..." (the oath of the envoys is inserted in the following) in *MM*, vol. 3, p. 43, lines 21-24, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 104, lines 32-34, no 35: "haec sic hi deposuerunt coram maiestate mea et hanc suam depositionem fide obstrinxerunt per scripturam ab ipsis subscriptam, et iureiurando, quae sic se habent".

834 For Gerardo see Gastgeber, *Übersetzungsabteilung*, vol. 2, pp. 350-381 and vol. 3, no 34, p. 281, commentary, line 11.

κάστρου καὶ τῆς χώρας ἡμῶν φυλάττωνται ἀπαρεγχείρητα καὶ ἀναλλοίωτα...[835]

The envoys refer to a document by which the consuls and the other authorities of Genoa have sworn an oath of loyalty to the emperor in the presence of a Byzantine envoy named Nikephoros and an interpreter named Gerardo. The latter must be without doubt "Γηράρδος Αλαμανόπουλος" who is also named together with Nikephoros Pepagomenos in a letter of Isaac II Angelos to the *podestà*, Manegoldo of Brescia and the consuls of Genoa.[836] That letter in addition to the information provided by the chrysobull of 1193 which is examined here, gives a clear picture of how treaties were made between the Byzantines and Genoa.[837] Finally, we should add that in the chrysobull of 1193 the Genoese envoy, Baldovino Guercio, is mentioned as "λίζιος" (and in Latin *vassallus*).[838]

[835] *MM*, vol. 3, p. 44, lines 19, 20-21, 24 – p. 45, line 1, no VII; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 105, line 24 – p. 106, line 6, no 35: "Quoniam (…) neque sane alius praetextus nobis relinquitur ad abrogationem pactorum (…) declaratorum per scripturam nostram iuratam et chrysobulum sacrae ipsius maiestatis in quo ipsa scriptura extensa est, cui scripturae consequenter consules civitatis nostrae et reliqui primores concivium nostrorum fidem iuraverunt erga potentem et sanctum imperatorem Romanorum dominum Isaacium Angelum et erga ipsam Romaniam apud legatos sacrae ipsius maiestati, qui illuc missi fuerant Pepagomenum Nicephorum et interpretem Gerardum, iuramus quod omnia quae a civitate et regione nostra concordata fuerunt et in chrysobulo comprehensa distinctim et in scriptura nostra in ipso extensa, declarata fuerunt, tamquam concordata ab ipsa civitate et regione nostra, et servabuntur intacte et immutabiliter in aevum omne ab omni populo civitatis et regionis Genuae… "

[836] Reg. 1610, year 1192.

[837] See chapters I,3. and V,5.

[838] See chapter V,5.4.

7. The decree of Alexios III Angelos in 1201 referring to grants of immovable property to Genoa (Reg. 1661a [1663])

This act is a decree (πρόσταγμα) addressed to Byzantine officials ordering them to proceed to deliver the areas that had been granted to the Genoese.[839] Despite the fact that the decree is not addressed to Genoa, I have included it in the examination of the acts of Genoa because it contains information about the imperial grants to the city of Genoa. I have used the edition by Miklosich and Müller for the Greek text[840] and the edition by Bertolotto G. and Sanguinetti A. for the Latin text.[841] The imperial decree is actually inserted in an act made and signed by Byzantine officials for the delivery of the property of the areas that had been granted to Genoa.[842] In this act they refer to the order they have received from the emperor for the delivery of the property to the Genoese and they have included this imperial order in their act.[843]

The decree was addressed to the following Byzantine imperial officials: i) the *protonotary* Constantine Pediadites (πρωτονοτάριος Κωνσταντίνος Πεδιαδίτης)[844], ii) the *logothetes* and *grammaticos* Theodore Triblattitas (λογοθέτης καὶ γραμματικός Θεόδωρος Τριβλαττίτα) and iii) the *desimotatos* John Anzas (δεσιμώτατος Ἰωάννης Ἀνζᾶς). The first must have been an imperial notary, the second most likely a secretary and the last could have been a judge. These officials were ordered to deliver to the Genoese envoy Ottobono de Cruce those areas that had been granted to Genoa in Constantinople; this includes rents of houses, landing-stages (*scalai*) and additional immovable property.[845] This act also states that the property was to be delivered to the

[839] There is also a preserved letter issued in 1199 addressed to the *podestà*, the consuls, the senate and the people of Genoa (Reg. 1649) by which the emperor announces to the Genoese that he is willing to negotiate a new agreement with them; the Greek text is in *MM*, vol. 3, pp. 46-47, no VIII and the Latin translation in *Cod. Dipl. Genova*, vol. III, pp. 145-146, no 57. Another letter is preserved which was issued in 1201 (Reg. 1660); it has the form of a *sigilion* and is addressed to the Genoese knight Guilelmo Cacallaro allowing him to pass undisturbed from any place within the empire in order to chase and catch some Genoese pirates. It is ordered that he should not pay any toll taxes and that he should be given help (for example horses); the Greek text is in *MM*, vol. 3, pp. 48-49, no X and Latin translation in *Nuova Seria*, pp. 468-469, no XV.

[840] *MM*, vol. 3, pp. 49-58, no XI.

[841] *Nuova Seria*, pp. 483-491, XVII. I have not found this act in the *Cod. Dipl. Genova*.

[842] The order of the emperor is in *MM*, vol. 3, p. 49, line 2 - p. 50, line 9, no XI.

[843] "Μηνὶ ὀκτωβρίῳ ιγ' ἰνδ. ε' θεῖον καὶ βασιλικὸν προσκυνητὸν πρόσταγμα ἐνεχειρίσθη ἡμῖν περιέχον οὕτω…." in *MM*, vol. 3, p. 49, lines 1-2, no XI; and the Latin text in *Nuova Seria*, p. 483, lines 1-2, no XVII.

[844] He is also mentioned in a chrysobull for Venice, Reg. 1590 (year 1189) and in a chrysobull to Genoa, Reg. 1609 (year 1192).

[845] "…πρωτονοτάριε κῦρ Κωνσταντῖνε Πεδιαδίτα, καὶ σὺ, λογοθέτα τε γραμματικὲ πανσέβαστε, σεβαστέ κῦρ Θεόδωρε Τριβλαττίτα. ἐνώθητε τῷ δεσιμωτάτῳ Ἰωάννῃ τῷ Ἀνζᾷ, καὶ παράδοτε τῷ συνετωτάτῳ ἀποκρισαρίῳ Γενούας Ὠτομπόνῳ Δελακρόζα δικαίῳ τοῦ κάστρου καὶ τῆς χώρας τῆς Γένουας τὰ παρὰ τῶν Γενουϊτῶν προκατεχόμενα ἐν τῇ Μεγαλοπόλει ἐνοικικὰ καὶ τὰ

Genoese envoy who acted on behalf of Genoa. Further on in the imperial order, the grants are described in brief: namely the buildings, as well as the rent that they earn and the landing area. After the inserted order of the emperor, the Byzantine officials certify in their act that the delivery of the grants has been made to the Genoese envoy, Ottobono de Cruce.[846] Then a detailed description of the granted areas, as well as the corresponding rents transferred to the Genoese is made. This is the act of the actual delivery of the granted areas, what was known as the *praktikon paradoseos* (πρακτικὸν παραδόσεως), which was given to the Genoese envoy. This act included in detail all the granted areas and income from the rent of the buildings. According to the act of delivery the grants consisted of immovable property, that is buildings (οἰκήματα) in the area of Constantinople. Some of these buildings were being rented or were given in a long term lease (*emphyteusis*) and therefore, for these cases, the Genoese were to receive the rental income; this is described in detail in the act. When a building is described as having been granted to Genoa, but has already been given to someone to use either to rent[847] or because of a right of *emphyteusis*, the name of the person to whom the rent or the *emphyteusis* has been made is mentioned, as well as the amount that he has to pay.[848] In the description of the

παραλίους σκάλας, τὰ καὶ προδεδωρημένα αὐτοῖς, ἔτι δὲ παράδοτε αὐτῷ καὶ τὰ ἀρτίως ἐπέκεινα τούτων δωρηθέντα παρὰ τῆς βασιλείας μου τῷ αὐτῷ κάστρῳ καὶ τῇ χώρᾳ Γενούας οἰκήματα…...” in *MM*, vol. 3, p. 49, lines 3-11, no XI; and the Latin translation in *Nuova Seria*, p. 483, lines 3-10, no XVII: “protonotarie domine Constantine Pediadita, et tu cancellarie scriba pansevaste, sevaste domine Theodore Triblattita, conjungiminor illmo Iohanni Anzae et tradite sapientissimo legato Genuae Ottobono de Cruce iure civitatis et regionis Genuae quae a Genuensibus prius habebantur in urbe Constantinopoli, habitacula et maritimas scalas quae et antea fuerant ipsis donata: insuper vero tradite ipsi quae praeter ea numer a maiestate mea donate sunt civitati et regioni Genuae aedificia…”

[846] “Κατὰ γοῦν τὴν περίληψιν τοῦ τοιούτου βασιλικοῦ προσκυνητοῦ προστάγματος ἐπήλθομεν τὰ προδωρηθέντα οἰκήματα τὰ δηλούμενα ἐν τῷ γεγονότι πρακτικῷ τῆς παραδόσεως αὐτῶν κατὰ τὸν ἀπρίλλιον μῆνα τῆς ι’ ἰνδ., καὶ διαγραφὴν κατὰ ταὐτὸν καὶ παράδοσιν τῶν τοιούτων πεποιήκαμεν πρὸς τὸν συνεπόμενον ἡμῖν καὶ παραλαμβάνοντα δικαίῳ τοῦ κάστρου Γενούας, τὸν συνετώτατον ἀποκρισάριον Ὠτομπόνον Δελακρόζα,….” In *MM*, vol. 3, p. 50, lines 10-16, no XI; and the Latin translation in *Nuova Seria*, p. 484, lines 10-15, no XVII: “Secundum igitur comprehensionem huiusmodi imperialis venerandi decreti, venimus ad prius donata habitacula declarata in acto traditionis ipsorum mense Aprili decimae indictionis et descriptionem simul et traditionem praedictorum fecimus erga sapientissimum legatum Ottobonam de Cruce…”.

[847] For example: “... κατεχόμενα ταῦτα παρὰ τῶν δύο αὐταδέλφων τῶν Ὀψικιάνων ἐπὶ ἐνοικίῳ νομισμάτων ὑπερπύρων ιη’ ” in *MM*, vol. 3, p. 51, lines 19-20, no XI; and the Latin translation in *Nuova Seria*, p. 486, lines 13-14, no XVII: “habita a dictis Opsicianis pro dicta pensione duodeviginti hyperpyrorum”.

[848] For example: “..καὶ πρὸς δύσιν τούτων οἰκήματα χαμαίγαια τρία διὰ τρικλιναρίων ζυγωμάτων μετὰ καὶ καταχύτου σκέποντος τὰς τούτων συρτάρας κατεχόμενα παρὰ Λέοντος τοῦ Στροβιλιάτου ἐπὶ ἐμφυτεύματι ὑπερπύρων δ’ διὰ τὸ κτισθῆναι παρ’ αὐτοῦ” in *MM*, vol. 3, p. 50, line 33 – p. 51, line 2, no XI; and the Latin translation in *Nuova Seria*, p. 485, lines 28-31, no XVII: “Et ad orientalem extremitatem talis vacui fundi embolo coniuncti

immovable property granted to the Genoese, instructions are included that relate to the use of some of this property. For example, in the description of a granted area near the monastery of Logothetes, it is stated that the remaining space between the doors (probably something like a yard) of the residents of the monastery should remain as a common crossing (passage), as previously.[849] Perhaps this was a kind of servitude, which was to be observed by the new owners, namely the Genoese. A church was granted to the Genoese.[850] Having thus issued the act of delivery, the names and titles of the three Byzantine officials are mentioned and their signatures affixed to the document.[851]

habitaculum inferum cum stillicidio quadrangulo pro remificum officinal habitum a Leone Stroviliato pro emphyteusi hyperperorum quatuor eo quod ab eo fuerit aedificatum".

[849] "...ἡ δὲ περιλιμπανομένη διάστασις ἡ ἐν τοῖς προθύροις τῶν Ἀσκοθυριαρέων ὀφείλει παραφυλαχθῆναι διὰ τὴν πάγκοινον δίοδον κατὰ τὸ πρότερον..." in *MM*, vol. 3, p. 51, lines 27-29, no XI; and the Latin translation in *Nuova Seria*, p. 485, lines 22-23, no XVII: "reliquum vero intervallum, quod est ante portas Ascothyriariorum debet custodiri pro communi transit ut prius".

[850] See *MM*, vol. 3, p. 55, lines 9ff., no XI.

[851] "...τούτων οὕτως εὑρεθέντων καὶ παραδοθέντων τὸ παρὸν πρακτικὸν τῆς παραδόσεως παρ' ἡμῶν ἐξετέθη μηνὶ καὶ ἰνδικτιῶνι τοῖς προγεγραμμένοις τοῦ ἔτους…" in *MM*, vol. 3, p. 57, lines 33-35 – p. 58, lines 1-6, no XI; and the Latin translation in *Nuova Seria*, p. 491, lines 11-18, no XVII: "His sic inventis et traditis, praesens actum traditionis a nobis est compositum mense et indictione supra scriptis anni…".

CHAPTER V

The Acts Directed at Venice, Pisa and Genoa: A Comparative Study

1. Introduction

This chapter is a comparative study of the legal issues arising from the Byzantine imperial acts directed at Venice, Pisa and Genoa. These common legal issues are divided as follows: i. issues dealing with the granting of immovable property to the three Italian city-republics, ii. issues regarding justice in general for the Italians, iii. maritime law, shipwreck and salvage provisions, and finally iv. issues dealing with oaths. Regarding the terminology of the first category, I use the expressions "grants" and "granting immovable property" and further on, when examining this category of legal issues, I will define the legal context of what exactly was being granted to the Italians by the emperor in respect of the immovable property in Constantinople.[852]

In this chapter, I have not only made comparisons between the acts themselves, but have tried to compare the legal issues arising in these acts with other documents relating both to Byzantine and Western legal practices. With regard to Byzantine legal practice, for example, I have used the Byzantine imperial acts directed at monasteries of that time in order to investigate similarities and differences in the procedures followed and the terminology used. With regard to legal practice in the West, for example, I have used Venetian documents and, in some cases, examples from the privilege charters of the Crusader kings to the Italian cities. It is true that the Crusader states form a special topic of which the legal issues are rather complicated especially due to the practices of feudal law in those regions.[853] However, as it has been already mentioned in the first chapter of this book, there are some parallels in the privilege charters of the Crusader kings and the chrysobulls of the Byzantine emperors to the three Italian cities.[854] More precisely, the legal issues that have appeared in our acts are also clearly present in the Crusader charters. The Crusader kings granted immovable property to the Italians in the Crusader

[852] See the next section, chapter V,2.

[853] On this issue in general, see Prawer, *Crusader*. Much has been written about the privileges of the Italians, legal issues and matters of applicable law in the Crusader states: see, for example, Prawer, *Crusader*; Favreau – Lilie, *Die Italiener*; Kedar, *Origins*; Nader, *Burgess law*, and numerous articles by Jacoby, among them, the articles collected in Jacoby, *Studies*. See also Jacoby, *The Venetian privileges*.

[854] See chapter I,1. A legal analysis of the Crusader charters clearly exceeds the scope of this dissertation. Certain passages in the Crusader charters have been compared to the examined acts with regard to content and terminology only in so far as these passages deal with issues similar to those arising in the acts examined.

states, allowed them jurisdiction in some cases, regulated matters of maritime law and shipwrecks etc. The fact that the Crusader charters show similarities with the Byzantine imperial acts is not peculiar if one considers that these acts cover the same period (11th and 12th centuries) and one of the parties, namely the Italian is the same.

While it is obvious that there is mutual influence between the Byzantine acts and that of the Crusader kings, the question arises as to whether it was the first that influenced the latter or the other way round.[855] This question is a classic example of "which came first, the chicken or the egg" given that all of these acts date roughly from the same period. It is therefore difficult to point out with certainty the level of influence on each side. In some cases, however, it is clear that the Crusader charters influenced the Byzantine imperial acts in the regulation of certain legal issues related to Italians. As Laiou has shown, this is obvious in the case of *intestate* law provisions dealing with Venetians; such provisions are clearly included for the first time in the Crusader charters to the Italians,[856] whereas in the Byzantine imperial acts such provisions are included only in one document dated rather late.[857] I also believe that in the case of granting jurisdiction to the Italians, the influence of the Crusader charters on the Byzantine acts is again clear, since such clauses were included for the first time in Crusader charters,[858] whereas such issues are regulated in only one Byzantine act, that of Alexios III Angelos to Venice in 1198.

Before moving on to the examination of the common legal issues in the Byzantine imperial acts, it is important to consider the status of the Italians in the Byzantine Empire. According to the 12th century Byzantine historian, John Kinnamos, sometime before 1171 Manuel I Komnenos made the distinction between Venetians who permanently resided in the empire (τοὺς ἐν Βυζαντίῳ ᾠκημένους), and Venetians who were merchants and just passing through the empire (τῶν κατ' ἐμπορίαν παραβαλόντων Οὐεννέτων):

...τοὺς μέντοι ἐν Βυζαντίῳ ᾠκημένους αὐτῶν τῶν κατ' ἐμπορίαν παραβαλόντων Οὐεννέτων ἀποδιελὼν Βουργεσίους τῇ Λατίνων ἐκάλεσε φωνῇ, πίστεις αὐτῷ δεδωκότας σὺν εὐγνωμοσύνῃ Ῥωμαίοις διὰ βίου τηρήσειν τὸ δούλιον. τοῦτο γὰρ ἑρμηνεύειν αὐτοῖς τὸ ὄνομα βούλεται.[859]

…dissociating those (of them) who were residents, from the Venetians who visited for commercial purposes, he used the Latin name *Burgesioi* for the former, who had pledged to him to observe together with gratitude, lifelong and loyal allegiance to the Romans. For it is this that he wants their name to express.

[855] See Prawer, *Crusader*, p. 244.
[856] Already in 1104, see chapter II,7.2.7.
[857] As early as in the chrysobull to Venice in 1198 by Alexios III Angelos, see chapter II,7.2.7. Laiou, *Byzantine trade*, pp. 186-87.
[858] See, for example the *Pactum Warmundi* in 1123. For a comparison of jurisdiction issues between the Byzantine and the Crusader acts see further on, chapter V,3.2.
[859] Kinn. p. 282, lines 3-8.

This passage of Kinammos is commonly referred to by scholars debating the meaning of the terms *habitatores* and *burgenses* in Byzantium.[860] While scholars such as Maltezou, Lilie and Jacoby have argued that *burgenses* and *habitatores* could be considered equivalent terms, meaning permanent residents,[861] Jacoby has signalled a shift in his thinking, proposing that *burgenses* carries a "dual legal meaning"; according to him, this group of Venetians consisted of both permanent residents and subjects (*bourgesioi*) of the emperor.[862]

In line with Jacoby's later writing and arguments put forward by scholars such as Borsari,[863] it seems unlikely that the term *bourgesioi*, used by Manuel here, is only a synonym of the term *habitatores*, meaning permanent residents of the empire. In general, the term *burgenses* clearly does refer to permanent residents, and in this sense commonly appears in a number of sources. However, it seems very plausible that the term *bourgesioi*, as it appears in the passage of Kinnamos, does not mean that this group of Venetians were *only* permanent residents, but that they held a special bond with the empire because they had to take the oath of loyalty to the Romans. The oath implies that we are dealing with a special procedure, by which the Venetians living permanently in the empire showed their loyalty to the emperor by promising this oath.

As Borsari notes, there is only one case in which the term *burgensis* is used in a Venetian document in 1197 and there the term is used in combination with the term *habitator* as follows: "Iohannes Christofolo burgensis habitator in

[860] Prawer, *Crusader*, p. 244. Jacoby has frequently described the distinction between the terms *mercatores*, *burgenses* and *habitatores*, see, for example, Jacoby, *Foreigners*, p. 90 and *The Byzantine Outsider*, pp. 129-147, especially pp. 135-136; on these terms, see also Schreiner, *Niederlassungen*, pp. 188-189 and Maltezou, *Les Italiens*, pp. 179-180.

[861] See Maltezou, *Les Italiens*, pp. 179-180; Maltezou, *Venetian habitatores*, pp. 234-35; Lilie, *Handel und Politik*, p. 297, footnote 44; Jacoby, *The Byzantine Outsider*, p. 136, especially footnote 34: "Kinnamos's complex formulation seems to suggest that those who opted for Byzantine status became *bourgesioi* of the emperor, yet this common interpretation is mistaken. The term stands for permanent residents, as opposed to visiting traders, in conformity with *burgenses* in Italian contemporary usage, to which Kinnamos alludes".

[862] See Jacoby, *Foreigners*, p. 90, in which he states that: "John Kinnamos reports that sometime before 1171 emperor Manuel I imposed a clear-cut off choice upon Venetians permanently settled in the empire. He compelled them to declare whether they were his *bourgesioi* (subjects) or whether they retained their condition of visiting traders and Venetian allegiance, with all the privileges and obligations deriving from either status. In that context *bourgesioi*, a hellenised Western term, bore a dual legal meaning as in Western usage, to which Kinnamos explicitly alludes. *Burgenses* stood then for both permanent residents and a lord's subjects, in contrast to *mercatores*, visting merchants."

[863] The opinion that *habitator* is only a synonym of *burgensis* has been rejected by Borsari in *Venezia e Bisanzio*, pp. 49-53, especially p. 53, footnote 109, where he notes: "L' ipotesi di LILIE, Handel und Politik, p. 297, n. 44, secondo cui *habitator = burgensis*, è da respingere".

Constantinopoli".[864] This testimony is a further argument to support the view that the term *bourgesioi* did not mean only permanent residents since the appearance of both terms here, one after the other, suggests a distinction between them. Perhaps even in the late 12th century the term *burgensis* defined the Venetians[865] who had this special status. But as Kinnamos informs us, it was during the reign of Manuel I Komnenos that this practice was introduced.

In understanding the motivation behind this distinction of Manuel I Komnenos, it is important to consider the character of Manuel himself. This is the emperor who had shown a particular admiration for Western manners and the Western way of life.[866] In my opinion, it is not a coincidence that Manuel uses a Latin term here to describe these permanent Venetian citizens who have to swear an oath of loyalty to him. If he wanted to make these Venetians Byzantine citizens he could have used a Greek term like "ὑπήκοοι", for example; instead he prefered a Western term. After explaining what the *burgesioi* were (Venetians permanently living in Byzantium who had to swear an oath of loyalty to the emperor), Kinnamos clearly states that this is how this word should be interpreted (τοῦτο γὰρ ἑρμηνεύειν αὐτοῖς τὸ ὄνομα βούλεται).[867] It could very well be the case that Manuel's intention was to adopt a procedure developed in the West which was connected to the term *bourgesioi*.[868] Perhaps Manuel also enjoyed considering these foreigners his *bourgesioi* and their having to take an oath of loyalty to him, something that reminded him of the Western practices he so admired. That is why I do not agree with the opinion, held by the majority of scholars, that these *bourgesioi* became Byzantine subjects.[869] At least this is not mentioned in the passage of Kinnamos. What is mentioned there is that the emperor gave the Latin name *bourgesioi* to the Venetians living permanently in the empire, who swore to him an oath of loyalty. In the examined Byzantine imperial acts the Venetians (as well as the Pisans and Genoese) have to repeatedly swear oaths of loyalty to the emperor.[870] It seems that the emperor wants some extra guarantees from these

[864] Lanfranchi, *SGM*, vol. III, p. 434, line 19, no 601. See Borsari, *Venezia e Bisanzio*, p. 50.
[865] As we will see, the term applied for Pisans as well.
[866] *ODB*, vol. 2, p. 1290; on the reign of Manuel I Komnenos, see Magdalino, *Manuel I Komnenos*.
[867] Kinn. p. 282.
[868] On how the term was used in the West see the observation of Nader, *Burgess law*, p. 18: "By the end of the eleventh century the term *burgensis* began to aqcuire a more legal dimension. We may accept a broad definition of the European *burgensis*: a Christian –and never a Jew- who did not belong to the class of *rustici*, and lived either in a city or a rural village.[...] legal language defined a *burgensis* as a person with certain rights recognized by written laws or unwritten and widely practised customs upheld by special courts in urban and rural communities". The status of a burgensis in the Crusader states was also connected to the property he leased, see Nader, *Burgess Law*, pp. 7-8.
[869] Borsari, *Il commercio Veneziano*, p. 997, footnote 57; Maltezou, *Les Italiens*, p. 180, Jacoby, *Foreigners*, p. 90.
[870] See chapter V,5.

bourgesioi that they will remain loyal to the empire. I agree with Borsari[871] that there is a different legal status between the *bourgesioi* and the travelling merchants, but as Schreiner states, it is difficult to say whether these *bourgesioi* lost their rights in their home country; as Laiou also notes, it is not easy to define their actual status.[872]

This difficulty does not only apply to Venetians but also to Pisans, who had also gained the status of *bourgesioi*.[873] In a document from 1166 in which the Pisan, Hugo Eteriano, announces to the consuls of Pisa the death of the Pisan Signoretto who lived in Constantinople, it is stated: "Signorectus itaque, clarissimus quondam [Pisa]nus civis, nunc vero burgensis invicti principis Manuel factus, migravit ad Deum."[874] Note how Signoretto is referred to in this passage. It is clear that the Pisan Signoretto was made a *burgensis* of the emperor Manuel. In other words, Signoretto is not just desribed as *burgensis* but as *burgensis* of the emperor Manuel. This is another proof I think, that the term *burgensis* does not only mean a permanent resident but that it was used by Manuel I Komnenos to demonstrate that the foreign person comes "under the power of the emperor" meaning that he has swore him an oath showing his loyalty to the empire. Based on this passage, it seems as if the Pisan Signoretto had indeed lost his Pisan nationality (especially by the contrast "quondam...nunc...") but again, whether this had actually happened is unclear especially because, as it is stated futher in that letter, on his gravestone we read that he belonged to the noble nation of the Pisans.[875] Moreover, the estate of the deceased Signoretto ended up in Pisan hands although he was a *burgensis* of the emperor. This information strengthens the argument the *burgensis* did not become a Byzantine subject; he continued to have his nationality but he was bound by an oath to the Byzantine emperor to observe his loyalty to the empire and therefore had a special status.

[871] See Borsari, *Il commercio Veneziano*, p. 997, footnote 57. While Maltezou in *Les Italiens*, p. 180, footnote 12, agrees with Borsari, she also refers to Schreiner for whom the difference of the legal situation between the two groups remains unclear.

[872] See Schreiner, *Niederlassungen*, p. 188: "Inwieweit sie (die burgenses) Rechte in ihrer Heimatstadt verloren haben, ist schwer zu sagen" and Laiou, *Institutional Mechanisms*, pp. 173-74.

[873] See Borsari, *Venezia e Bisanzio*, p. 50, in which he refers to the case of the Pisan, Signoretto.

[874] Müller, *Documenti*, p. 12, lines 9-12, no X.

[875] Müller, *Documenti*, p. 12, lines 20-22, no X: "…Signorectus…Qui Pisanorum gloria nobilium".

2. Granting immovable property

2.1 Introduction

In the examined imperial acts referring to Venice, Pisa and Genoa we have seen that immovable property was granted by the emperor to all three Italian cities. These grants consisted of areas in Constantinople, mainly landing-stages (*scalai*)[876] or merchant districts, namely areas in which the merchants transacted their business (*embola*)[877]; sometimes the emperors also granted churches or other buildings.[878] These possessions stemmed from the need of the merchants for places in which they could safely store their merchandise. Lodging places for foreign merchants in cities were familiar to those in the Mediterranean. The so-called *fondaci* were hostelries for Christian merchants who were often granted special privileges by Muslim governments.[879] Byzantium also knew the institution of the so-called *mitata*, lodging houses for merchants; yet, they differed from the *fondaci*, since according to the *Prefect's Book* foreign merchants were allowed to stay in the *mitata* only for a short period of time, usually three months, unless special privileges were granted.[880]

The first evidence of this kind of grant of immovable property in the examined Byzantine acts is preserved in the chrysobull issued in 1082 by Alexios I Komnenos and directed at Venice;[881] this was followed by grants to Pisa by the same emperor in 1111[882] and finally, grants to Genoa, which received its first immovable property in 1169 from Manuel I Komnenos.[883] In this way, foreign districts were established in the Byzantine capital. The main question that arises here is whether or not the Italians acquired full ownership of these areas. Was it ownership that was transferred and to whom? The city itself or the citizens who lived there?

---

[876] On the term "σκάλα" see Maltezou, *Il Quartiere*, p. 32, in which a further bibliography on the term is provided. See also Magdalino, *Maritime*, pp. 223-224.

[877] For the term *embolon* see Brown, *Venetian Quarter*, p. 75 and Magdalino, *Maritime*, pp. 223-224.

[878] See for example Reg. 1081 in chapter II,2.2.1.

[879] See Constable, *Fondaco*, pp. 145-156, especially p. 149. About the *fondaci* in the Mediterranean world and matters related to this, see also Constable, *Housing*.

[880] *Prefect's Book*: 5.5 in Koder, *Das Eparchenbuch*, p. 96. On the *mitata*, see Constable, *Housing*, pp. 147-157.

[881] Reg. 1081, see chapter II,2.

[882] Reg. 1255.

[883] Reg. 1488. For the Venetian, Pisan and Genoese districts in Constantinople, see Magdalino, *Constantinople*, pp.78ff.

2.2 Legal terminology

In the Byzantine imperial acts directed at Venice, Pisa and Genoa, the terms used to describe grants of immovable property are "donation" and its derivatives. In particular, in the documents preserved in Greek, the word "δωρεά" is used (in Latin, *munus*),[884] as well as expressions such as "δεδωρημένων ἀκινήτων" (in Latin, *immobilium donatorum*),[885] "δωρεῖσθαι" (in Latin, *largiendi*),[886] "δωρουμένης" (in Latin, *largitur* or *tribuentur*),[887] "ἐδωρήθησαν" (in Latin, *donata fuerunt*) [888] etc. In only one chrysobull, that of Alexios I Komnenos issued in 1082, the following expression in Latin is used: "...dominabuntur (Venetici) collatorum immobilium..."[889] However, in this case it is higly doubtful whether, based on the verb used (*dominari*), which means in general "to be lord and master", "to rule", "to govern", the Venetians were to receive full ownership of the area described.[890] Unfortunately, this act has not been preserved in Greek and it is therefore impossible to know what the original corresponding term would have been. What is consistently mentioned in these Byzantine imperial acts is that the Italians have the "κατοχή" and /or the "νομή" of this immovable property, namely that they have the *possessio* of these areas.[891] Similar expressions are also used, for example: "ἐν κατοχῇ" (in Latin, *in possessione*)[892] or "κτήσασθαι...ἔμβολον καὶ σκάλαν..." (in Latin, "adepti…fuerunt…embolum et scalam…")[893] or "διορίζεται κατέχεσθαι τὰ τοιαύτα πάντα..." (in Latin, "iubet ...omnia possideri...")[894] or "οὐδ' εἰς αἰῶνας…τῆς τούτων κατοχῆς καὶ νομῆς στερῆσαι ὑμᾶς τις δυνήσεται", (in Latin, "neque in saecula….horum retentione et fruitione privare vos aliquis poterit"),[895] "καὶ ἔσονται ταύτα πάντα κατεχόμενα παρὰ τοῦ κάστρου..." (in Latin,

884 See for example Reg. 1499[1400], Müller, *Documenti*, p. 45, line 93 and p. 54, line 84, no XXXIV.

885 See Reg. 1612, *MM*, vol. 3, p. 39, line 31 and p. 81, line 14, no VI.

886 See Reg. 1607, Müller, *Documenti*, p. 47, line 9 and p. 55, line 100, no XXXIV.

887 See Reg. 1607, Müller, *Documenti*, p. 47, line 10 and p. 55, line 100, no XXXIV. See also Reg. 1609, *MM*, vol. 3, p. 33, line 30, no V and *Cod. Dipl. Genova*, vol. III, p. 59, line 18, no 21.

888 See Reg. 1607, Müller, *Documenti*, p. 46, line 19 and p. 55, lines 6-7, no XXXIV.

889 Reg. 1081, see Borsari, *Il crisobullo*, p. 130, line 81 (version B). The same term "dominabuntur" is also included in the other version (A) of this chrysobull on p. 127, line 80.

890 See for example, Lewis and Short, *Dictionary*, 608.

891 I prefer to use the Latin term "possessio" because in English the term "possession" can mean both possession and detention.

892 Reg. 1499[1400], Müller, *Documenti*, p.45, line 31 and p. 54, line 24, no XXXIV.

893 Reg. 1499[1400], Müller, *Documenti*, p. 45, lines 21-24 and p. 54, lines 13-17, no XXXIV.

894 Reg. 1607, Müller, *Documenti*, p. 46, lines 44-45 and p. 55, lines 34-36, no XXXIV.

895 Reg. 1612, *MM*, vol. 3, p. 37, lines 14-15, no VI and *Cod. Dipl. Genova*, vol. III, p. 79, lines 13-14, no 25.

"et habebuntur haec omnia a civitate...")[896], "ἀλλ' οὐδὲ ἡ κατοχὴ καὶ νομὴ τῶν ἀναγεγραμμένων παραλίων σκαλῶν" (in Latin, "sed neque occupatio et concessio descriptarum maritimarum scalarum[897], possessionem et fruitionem ergasteriorum….possideant"[898]) etc. It is clear that in any case the Italians did receive the *possessio* of the areas in Constantinople.

Based on the Byzantine imperial acts directed at Venice, Pisa and Genoa, we also observe that the Byzantines did not make a sharp distinction between the terms *possessio* and *detentio* (in Roman law *possessio* and *possessio naturalis* respectively), but that they used both terms, that is "νομή" and "κατοχή" and their derivatives in the sense of *possessio*.[899] It is obvious from these acts that the Italians intended to use this property for themselves; in other words, in legal terms we are dealing with *possessio*, since the element of "animus" is also present here. However in the examined material both terms "νομή" and "κατοχή" are used in these acts to describe the *possessio* of the immovable property by the Italians. Whether there was a sharp distinction in Byzantine sources between *possessio* and *detentio* is highly questionable.[900] For example, in the Byzantine monastic acts terms like "νομή" or "κατοχή," or words deriving from these are used in a rather confusing way in order to describe the *possessio* of immovable property.[901] However, the fact that correct legal terms were not used in documents was a problem generally in Byzantine law.[902]

Especially for the terms "κατοχή", "νομή" and "δεσποτεία" there are examples showing that these terms were used in an imprecise way.[903] Kazhdan has shown that the term "δεσποτεία" is sometimes used as *possessio*.[904] I agree with the fact that the term "δεσποτεία" in Byzantine sources can sometimes mean only *possessio* but I do not believe that based only on the examples quoted by Kazhdan we can reach general conclusions and say that "δεσποτεία"

[896] Reg. 1609, *MM*, vol. 3, p. 32, line 18, no V and *Cod. Dipl. Genova*, vol. III, p. 58, line 14, no 21.
[897] Reg. 1609, *MM*, vol. 3, p. 33, line 11, no V and *Cod. Dipl. Genova*, vol. III, p. 59, lines 2-3, no 21.
[898] Reg. 1304; this act is only preserved in a Latin translation, see Pozza and Ravegnani, *I trattati*, p. 54, lines 1-4 (version D), no 3.
[899] *Detentio* was not a technical term in Roman law but the term *possessio naturalis* was used to describe detention, see Berger, *Dictionary*, p. 433. The classic Roman jurists did not use a single term to describe what today's laywers define as "detention"; yet they did indicate a sharp difference in the legal consequences between possession and the simple holding of a thing, see Nicholas, *Roman Law*, p. 112 and Tjeenk, *Gerechtigden*, pp. 13ff, in which the author provides a description of possession and detention in Roman law.
[900] In modern Greek law, the terms "νομή" and "κατοχή" are used to describe possession and detention respectively.
[901] See for example, Acts of the Patmos monastery in Nystazopoulou, *Patmos*, p. 83, lines 4; no 55; *Actes de Lavra*, p. 262, line 51 no 49 and p. 303, line 7, no 58.
[902] Kazhdan, *Do we need*, pp. 19-21 and by the same author, *State*, p. 88.
[903] See *ODB*, vol. 3, pp. 1707-08.
[904] Kazhdan, *Do we need*, pp. 20-21.

means *possessio*. There are many cases in which the term "δεσποτεία" is used to describe full ownership in Byzantine sources and this should also not be underestimated. Only a thorough study of how the terms are used in Byzantine sources can lead to safe conclusions.[905] In this section, I will refer to some examples of how the term "δεσποτεία" is used in monastic documents and compare them to the examined material.

In a chrysobull by Alexios I Komnenos[906] issued in 1084, by which the ownership by Leo Kephalas of an area in Mesolimna near Thessalonica was being confirmed, it is mentioned:

Θεσπίζει γὰρ ἡ ἡμῶν θεοσέβεια δεσπόζειν τὸν διαληφθέντα μάγιστρον Λέοντ(α) τὸν Κεφαλ(ᾶν) τοῦ τοιούτ(ου) κτήματο(ς) τῶν Μεσολιμνί(ων) μετὰ πάντων τῶν προσόντων αὐτῷ δικαίων (καὶ) ρονομ(ίων) κατὰ τὴν περίληψιν τοῦ ἐπὶ τῇ παραδόσει τούτ(ου) γεγενημένου αὐτῷ πρακτ(ικοῦ) ἐπὶ τελεία (καὶ) ἀναφαιρ(έ)τ(ω) δεσποτ(εία) (καὶ) κυριότ(η)τ(ι) εἰς τοὺς ἑξ(ῆς) ἅπαντας (καὶ) διηνεικεῖς χρόνους... [907]	Our Religiousness therefore orders that the mentioned magister Leo Kephalas owns this field of Mesolimnia together with all the rights and privileges that belong to it according to the contents of this act (*praktikon*) that has been made at its delivery to the full and secure[908] ownership and property for all the time to come...

In an act of delivery in 1089, it is stated that the emperor donated immovable property to the monk, Christodoulos, and this donation consisted of the full ownership of this property:

...[ἐ]δωρήσατ(ο ἡ βασιλ(εία) μου κατ(ὰ) [τε]λείαν καὶ ἀναφαίρετ(ον) δε[σπο]τ(είαν) τῷ (μονα)χῷ Χριστ[οδούλῳ]...[909]	...(these) my Majesty has donated to the monk Christodoulos as ownership in its full and secure form...

In an act of 1101-1102 by which the monk Damianos donates his monastery Theotokos, known also as Kalaphatou, to the monastery of Lavra, the donation is expressed as follows:

...κ(αὶ) δὴ ἀπεντεύθεν ἴδη ἀποδίδομέ σοι ταύτην τὴν μονὴν ὁλοκλήρως, τοῦ εἶναι	...and from this moment I give you this monastery in full, so that it is in the

[905] Regarding the notion of *possesio* in Byzantine law, there is a doctoral thesis currently being written by Marios Tantalos in Greek in the Department of Legal History in the Law Faculty of the University of Athens under the supervision of Prof. E. Papagianni.

[906] Reg. 1115a [1134].

[907] *Actes de Lavra*, p. 247, lines 27-32, no 45. For the expression "ἀναφαίρετος δεσποτεία" see also, for example, *Actes de Lavra*, p. 243, line 25, no 44; p. 261, line 10, no 49.

[908] In the Greek text we find "ἀναφαίρετος" which literally means "can not be taken away" which I have translated here as "secure."

[909] Nystazopoulou, *Patmos*, p. 51, lines 8-9, no 52. The same expression is used again further on in this document, p. 52, lines 20-21, no 52.

εἰς τὴν ἐξουσίαν κ(αὶ) θέλησιν κ(αὶ) δεσποτείαν τῆς Λαύρ(ας) μ(ε)τ(ὰ) πάντ(ων) τῶν πραγμ(ά)τ(ων) κινητῶν τε κ(αὶ) ἀκινήτων κ(αὶ) τὸν περιορισμὸν αὐτῆς, κτίζειν, φιτεύειν, καλλιεργεῖν ὡς βούλεσθαι, μὴ περικοπτομ(έν)η μήτε παρ' ἐμοῦ μήτε παρ' ἄλλου τινός.[910]

power and will and ownership of the monastery of Lavra; together with all goods, movable and immovable, and its boundaries allowing you to build, plant and cultivate as you wish, without being disturbed[911] my me or by anyone else.

From these few examples of which there are many more in the acts of the monasteries,[912] we see that the term "δεσποτεία" and / or "κυριότης" is often accompanied by an adjective that shows that there are no restrictions, and that this is ownership in the full sense of the word; for example, "τελεία" and /or "ἀναφαίρετος δεσποτεία" or "καθαρά δεσποτεία."

In the examined Byzantine imperial acts referring to the city-republics of Venice, Pisa and Genoa we have not come across the terms "δεσποτεία" or "κυριότης", or a term like "dominium" in Latin or derivatieves of these words, which I think is an indication that the Italians did not receive full ownership of the areas in Constantinople.[913] I deliberately speak of indication and cannot reach definitive conclusions based only on the legal terminology because, as I have explained above, one of the problems in Byzantine law is the use of correct legal terms. However, I do not think that it is a coincidence that the terms "δεσποτεία" or "κυριότης" or their derivatieves are not mentioned even once in the Byzantine imperial acts to the Italian city-republics. The fact that in the examined imperial acts these grants are described as "donations" does not necessarily mean that full ownership of these areas was being transferred. In other words, although in the examined imperial acts reference is made to "donations" of the emperor, what the Italians actually received was the right to possess and use these areas (*ius fruendi, ius utendi*), but *not* the right to assume full ownership of these areas, which includes the right to dispose by alienation (*ius alienandi*); at least this is not mentioned in our acts, namely that they can sell the property and in general do to it what they want. In fact, in some acts we see that the Italians receive this property with some restrictions. Such is the case of the chrysobull of Isaac II Angelos to Pisa in 1192. There we read that the Pisans were allowed to possess the immovable property forever but, for example, the buildings that they were allowed to build had to be identical to

[910] *Actes de Lavra*, p. 280, lines 9-11, no 54.

[911] With regard to "περικοπτομένη", in this context it probably means something like "without any deduction"; see also the opinion of the editors in the analysis of this act in *Actes de Lavra*, p. 279, no 54: "…sans aucune retenue…"

[912] See, for example, Nystazopoulou, *Patmos*, p. 7, lines 72-73, no 50; *Actes de Lavra*, p. 176, lines 33-34, no 25; p. 243, lines 24-25, no 44 and p. 294, lines 63-64, no 56.

[913] In only one chrysobull do we come across the expression in Latin "dominabuntur (Venetici) collatorum immobilium" but, as I have explained earlier, it is highly doubtful based on the verb *dominari* to conclude that the Venetians received full ownership of this property. See the beginning of this section 2.2.

those that already existed.[914] However, these restrictions could also be limited to rules of building constructions. On the other hand, I also do not believe that the Italians were only simple possessors. The fact that an act of delivery (*praktikon traditionis*) is drawn up in addition to the guarantees of the emperor indicate that it is something more than just *possessio* that the Italians receive here.[915] If the Italians were considered only possessors, the question could also arise whether they could acquire full ownership of these immovables by way of *praescriptio*, namely after the lapse of 30 years; nothing is mentioned about this in the acts.

What is granted here by the emperor to the Italians is rather similar to a right of *emphyteusis*. *Emphyteusis* was a *ius in re aliena*, meaning a right *in rem* over another man's property.[916] The right of *emphyteusis* was hereditary and consisted of a long-term lease of land in return for a payment. Its origin lay in the practice of the state to grant areas, especially rural areas, for cultivation (*ager vectigalis*) to private persons against an annual payment (*canon, vegtical*). This grant was made for eternity (*in perpetuum*) and the holder enjoyed not only the *possessio* of the land but also had an *actio in rem* just like the owner or the usufructuary.[917] The owner remained the person who gave the land in lease. *Emphyteusis* was, in fact, the broadest of the limited real rights since it was a hereditary and alienable right. As I have mentioned above, the grants of immovable property to the Italians described in the examined acts resemble the right of *emphyteusis*. I speak of resemblance because what is missing here is the payment. It is not mentioned in the Byzantine imperial acts that the Italians had to pay an annual amount for using this property. Perhaps the help that the Italians have to offer to Byzantium in return for receiving these grants can be considered as a 'payment'.

At this point I would like to add that from the 12th century, the Byzantines had also developed the institution of conditional grants under the name *pronoia* (προόνοια). These grants were given mainly to individuals in return for military services but there is discussion about the actual nature of these grants and the legal status of the holders.[918] In that respect, perhaps, the specific time frame of the examined material should seriously be taken into consideration. In the first chrysobull of 992, no grants of immovable property were made to the Venetians. The first act which grants immovable property to Italians in Constantinople is the chrysobull of Alexios I Komnenos directed at Venice in 1082. By that act, the Venetians are granted not only landing-stages

[914] Reg. 1607. Müller, *Documenti*, the Greek text on p. 48, lines 72-75 and the Latin on p. 57, lines 67-69, no XXXIV. See the examination of this act in chapter III,3.2.3.

[915] On the *praktikon traditionis* and the guarantees of the emperor see chapter V.2.3 and V.2.4 respectively.

[916] For the right of *emphyteusis*, see for example Nicholas, *Roman Law*, pp. 148-149.

[917] Nicholas, *Roman Law*, p. 149.

[918] There is extensive literature on this matter. See *ODB*, vol. 3, p. 1734 and the bibliography cited by Oikonomides in *Byzantine State*, p. 1042.

but more immovable property in the capital, including for example *ergasteria* and the annual income of a bakery.[919] Perhaps it is not a coincidence that the first grants of immovable property to the Italians are made during the same period in which privileges as a system develop in what is known as *pronoia*.[920] As Svoronos has noted, the institution of *pronoia* consists of elements that were not unknown in earlier Byzantine law, namely the separation of bare ownership and *possessio*, the granting of state land to individuals as a donation and more. However, it was during the Komnenian period that these elements were blended and produced the new institution of *pronoia*[921]. It is worth taking into account that it is during this same Komnenian period in which all these legal notions are developed, blended and take a new form, that the first grants of immovable property were also made to the Italians by the Byzantine emperors.

In one of the examined documents, the chrysobull of Alexios I Komnenos to Venice in 1082[922], it is mentioned that the Venetians receive these grants of immovable property in all future and eternal time (*in deinceps omnia et perpetua tempora*).[923] The term *in perpetua* used here is also another argument in favour of the opinion that what is granted here to the Italians resembles the right of *emphyteusis*, since this is the term that is often used when some immovable property is given in *emphyteusis*. In the rest of the examined Byzantine imperial acts, we find other expressions which suggest that the grants of immovable property made by the emperor to the Italians are made for eternity.

For example, in the chrysobulll of Alexios I Komnenos in 1082 to Venice, it is mentioned that the Venetians will receive these grants "without any disturbance or disruption henceforth for ever and continuously" ("sine ablatione et infestatione amodo per omnes et assiduos annos").[924] In the chrysobull of Isaac II Angelos in 1192 in favour of Pisa[925], it is ordered that "all this property will be possessed by the community and the land of Pisa for all the times to come according to the act of their delivery" (καὶ διορίζεται κατέχεσθαι τὰ τοιαύτα πάντα παρὰ τοῦ μέρους τοῦ κάστρου καὶ τῆς χώρας τῆς Πίσσης εἰς τοὺς ἑξῆς ἅπαντας καὶ διηνεκεῖς χρόνους κατὰ τὸ γενησόμενον πρακτικὸν τῆς τούτων παραδόσεως).[926] Also in the chrysobull of Isaac II Angelos

[919] See Chapter II,2.1.
[920] See Oikonomides, *Byzantine State*, pp. 1042- 1048.
[921] See *History of the Greek Nation*, vol. 9, p. 72.
[922] Reg. 1081.
[923] Borsari, *Il crisobullo*, p. 127, lines 81-82.
[924] Borsari, *Il crisobullo*, p. 130, lines 81-2; see chapter II,2.2.1.
[925] Reg. 1607.
[926] Müller, *Documenti*, p. 46, lines 44-48 and the Latin translation on p. 55, lines 36-38, no XXXIV: "Et iubet huiusmodi omnia a parte civitatis et terrae Pisanae possideri a modo per omnes et assiduos annos secundum faciendum practicum horum tradicionis...". See chapter III,3.2.

in 1192[927] to Genoa we read that "the *possessio* and occupation of the registered maritime landing-stages and the buildings […] shall never stop" (καὶ παύσεται οὐδέποτε […] ἡ κατοχὴ καὶ νομὴ τῶν ἀναγεγραμμένων παραλίων σκαλῶν καὶ τῶν οἰκημάτων).[928] These expressions suggest that the Italians have the right of use of this immovable property in perpetuity, which strengthens the opinion that what the Italians receive here in respect of the immovable property is similar to a right of *emphyteusis*.

In some of the examined Byzantine imperial acts we read that the Italians receive these grants for so long as they observe the agreements that have been made with the Byzantine emperor. For example, in the chrysobull to Pisa in 1170 by Manuel I Komnenos[929], it is stated that the agreements about the grants of the immovable property that have been made in favour of the Pisans will be kept inviolable as long as the Pisans observe the agreements and the oaths towards the empire.[930] There are more such examples that we have encountered in the examined material.[931] Based on these examples, the right that the Italians receive that is related to the property in Constantinople can also be compared to the Roman law *precarium*, that is when A allows B to hold a piece of the property of A, but the latter retains the right to demand the property back whenever he wants. The fact that the Italians were not full owners of the immovable property in Constantinople, as well as the fact that they swore oaths to the emperor raises the question whether the Italians were actually in a feudal relationship with the emperor. However, I do not believe that this was the case.[932] The kind of *possessio* of the immovable property that the Italians receive in Constantinople is reminiscent of the *vacua possessio* of Roman law, namely "the free and unimpeded possession of an immovable, which the buyer might enter without being disturbed by the seller or by a third person".[933] What the Italians receive here in regard to the immovable property in Constantinople resembles the right of *emphyteusis*, as I have explained above. As we will see further on, there are more arguments to support this

[927] Reg. 1609.

[928] *MM*, vol. 3, p. 33, lines 10-11, no V and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 59, lines 1-3, no 21: "et numquam cessabit [...] occupatio et concessio descriptarum maritimarum scalarum et habitaculorum...". See chapter IV,4.2.2.

[929] Reg. 1499[1400].

[930] "...καὶ διορίζεται βεβαία μένειν καὶ ἀπαρεγχείρητα τὰ γεγονότα τούτοις χρυσόβουλλα ἐπὶ τῇ δωρεᾷ τῶν τοιούτων ἀκινήτων, εἴπερ καὶ ἡ τοιαύτη χώρα τῆς Πίσσης καλῶς συντηρεῖ τὰς πρὸς τὴν βασιλείαν ἡμῶν καὶ τοὺς κληρονόμους καὶ διαδόχους αὐτῆς συνθήκας καὶ τοὺς ὅρκους αὐτῶν πρὸς τιμὴν καὶ ὠφέλειαν τῆς βασιλείας ἡμῶν καὶ τῆς Ῥωμανίας" in Müller, *Documenti*, p. 45, lines 96-103, no XXXIV; see chapter III,2.2.2.

[931] See, for example, the chrysobull of Alexios III Angelos to Venice in 1198 in chapter II,7.8.

[932] See my arguments on this issue in chapter V,5.

[933] Berger, *Encyclopedic Dictionary of Roman Law*, p. 737. About the concept of *possessio* in Roman law in general see Kaser, *Römisches Privatrecht*, pp. 251-256.

opinion when examining the issue of the *traditio per cartam*[934] and the guarantees given by the emperor to the Italians.[935]

It is also interesting to examine how the Italians themselves described these grants made by the emperor in Constantinople. In the examined imperial acts directed at Venice, Pisa and Genoa, we have seen that sometimes sections were included in which the Italian envoys referred to the negotiations with the emperor and the matter of his grants, or take an oath related to these grants and their obligations to the emperor. We are therefore dealing with a Byzantine document, which contains, in some cases, the words of the Italians themselves. In the examined chrysobulls, the Italians sometimes refer to the areas that have been granted by the emperor to their cities. In the chrysobull of Isaac II Angelos to Genoa in 1192[936], the Genoese envoys mention that the Genoese have *possessio* not only of the areas previously granted to them, but also of those areas granted to them on that day. However, one must take into account that this text is, after all, part of the chrysobull and was therefore prepared and written by Byzantine officials:

...ὡς καὶ τῆς χώρας ἡμῶν ἀπολαύειν ὀφειλούσης τῆς ἐξκουσσείας (…) καὶ ἐν κατοχῇ καὶ νομῇ εἶναι οὐ μόνον τῶν προκατεχομένων παρ' ἡμῶν ἀλλὰ καὶ τῶν σήμερον ἐπιφιλοτιμηθέντων ἡμῖν…[937]	...that our country must enjoy of the discharge (…) and that we must be in possession not only of what we have held before, but also of what has been given to us today in addition…	...ita ut regio nostra frui debeat excusatione (…) et esse in detentione et distributione non solum eorum quae antea a nobis detinebantur, sed et eorum quae hodie nobis concedenda sunt.[938]

An additional, and perhaps more accurate, source in determining how the Italians described the granting of immovable property by the emperor can be found in the letters of instruction provided by the Italians to their envoys. We have seen that Italian envoys were sent to Constantinople to negotiate and establish treaties with the emperor. There are some preserved letters of instruction from the Italians to their envoys in which they sketch the mandate of their envoy and provide instructions on how and what to negotiate with the emperor.

In one such letter from 1201 by the Genoese consuls to their envoy Ottobono della Croce, instructions were given to him concerning their area in Constantinople. In this instruction letter, it is significant that the Genoese consuls use the term *possessionem emboli* and not, for example, a term such as

[934] See chapter V,2.3.
[935] See chapter V,2.4.
[936] Reg. 1609.
[937] *MM*, vol. 3, p. 30, lines 10-16, no V.
[938] *Cod. Dipl. Genova*, vol. III, p. 56, lines 14-0, no 21.

dominium.[939] In two Venetian documents from 1156 preserved in the archives of the family Zusto, there is also information about the grants of Manuel I Komnenos to Venice. What is interesting in these two documents is that the Venetians use Byzantine terminology when they refer to the grants that the emperor made to them in Constantinople. In both texts, references are made to the chrysobull of the emperor and the *praktikon* of the emperor.[940] The Venetians do not restrict themselves in translating the term *praktikon* into Latin, using for example, *charta* or *chartula* or something similar; they prefer to use the Greek terms in Latin characters ("grossobulium et pragtikon" and "grossobulum et praticon" respectively) when they refer to the grant that the emperor made to them.[941] This means that the Venetians clearly considered it important to use the original Byzantine terminology in referring to the grants made by the emperor even when these references were made within their own Venetian documents. From the way the text is formulated, it is also evident that the Venetians considered the *praktikon* of the granted property important. The property was granted to them not by the chrysobull alone, but by the chrysobull *and* the praktikon, as it is described in these documents. On the other hand, when reference is made in these documents to property granted by the doge to other Venetians living in Constantinople, the term *concessionis cartula* or *promissionis cartula* is used.[942] In other words, the Venetians retain Byzantine terminology in their own documents when referring to grants made by the emperor, but they revert back to their own terminology when this property is granted to other Venetians by the doge.

[939] "Possessionem emboli nostri et ambas scalas quas habere solebamus cum omnibus pertinentiis consequi non pretermittatis cum omni insula et area domorum, item cum domibus duabus in quibus molendina et remi fiunt versus embolum Pisanorum et aliis duobus domibus versus Sanctam Sophiam, sicut concesse et largite fuerunt legatis nostris Willelmo Tornello et Guidoni Spinule." in *Cod. Dipl. Genova*, vol. III, p. 195, lines 6-11, no 77.

[940] The same occurs in an act of 1090 by which the doge grants the property of the Italians in Constantinople to the monastery of San Giorgio Maggiore, see *TTh*, vol. I, p. 56, lines 11-12 (*pratico*), no XXV. The document is also published in Lanfranchi, *SGM*, vol. II, p. 169, line 19 (*pratico*), no 69.

[941] In Lanfranchi, *Famiglia Zusto*, p. 53, lines 12-14, no 23: "...quod nuper dominus Manuel serenissimus Constantinopolitanus imperator communi Venecie per suum grossobulium et pragtikon concesserat..." and p. 54, lines 15-17, no 24: "...quod Manuel serenissimus Constantinopolitanus imperator noviter nostro communi dederat per suum grossobulum et praticon...". Note how the Venetians use the title "emperor of Constantinople" in their documents. For this issue see chapter III,2.2.1.

[942] Lanfranchi, *Famiglia Zusto*, p. 53, for example lines 9, 19 and 25, no 23.

2.3 Formalities of the grants: the *praktikon paradoseos*

Regarding the formalities of the grants made by the emperor to the Italians, an act of delivery, a so-called *praktikon paradoseos* (πρακτικόν παραδόσεως) was recorded by imperial officers (notaries or secretaries, for example) and it had to be registered with the chrysobull at the corresponding imperial office.[943] In some cases, this act had to be ratified by some other officer, probably of a higher rank.[944] Questions arise here regarding the legal value of this document, namely whether it had a constitutive or declaratory legal effect, and whether this procedure corresponded to the Byzantine legal practice of that time. Once again, the acts preserved in the monasteries are a valuable source of information about the legal practice of that time. By studying these acts, one sees that whenever there is a sale, donation or exchange of some property, a document, the *praktikon paradoseos* was to be made. In a chrysobull of Alexios I Komnenos in 1084, for example, in which the emperor confirms the ownership of certain areas by Leo Kephalas, which we have seen above, it is mentioned:

Θεσπίζει γὰρ ἡ ἡμῶν θεοσέβεια δεσπόζειν τὸν διαληφθέντα μάγιστρον Λέοντ(α) τὸν Κεφαλ(ᾶν) τοῦ τοιούτ(ου) κτήματο(ς) τῶν Μεσολιμνί(ων) μετὰ πάντων τῶν προσόντων αὐτῷ δικαίων (καὶ) προνομ(ίων) κατὰ τὴν περίληψιν τοῦ ἐπὶ τῇ παραδόσει τούτ(ου) γεγενημένου αὐτῷ πρακτ(ικοῦ) ἐπὶ τελεία (καὶ) ἀναφαιρ(έ)τ(ω) δεσποτ(εία) (καὶ) κυριότ(η)τ(ι) εἰς τοὺς ἑξ(ῆς) ἅπαντας (καὶ) διηνεικεῖς χρόνους... [945]	Our Religiousness therefore orders that the magister mentioned, Leo Kephalas, owns this field of Mesolimnia together with all the rights and privileges that belong to it according to the contents of the act (*praktikon*) in his favour that has been made for the delivery to full and secure ownership for all the time to come...

The procedure described in the acts of the monasteries is similar to that in our documents. In all cases, namely the cases of the monasteries where ownership is being transferred, and the case in our documents where grants are being made (yet full ownership is not being transferred, as stated earlier[946]), an act of delivery described as *praktikon paradoseos* is necessary. In this act, by which the ownership by Leo Kephalas is being confirmed, a description of this property is included. Also in the examined chrysobulls directed to the Italian

[943] See for example, Reg. 1081 in chapter II,2; Reg. 1373 in chapter II,4.3; Reg. 1607 in chapter III,3 and Reg. 1609 in chapter IV,4.
[944] See Reg. 1373 in chapter II,4.3; Reg. 1590 in chapter II,6.2 and Reg. 1609 in chapter IV,4.2.2.
[945] *Actes de Lavra*, p. 247, lines 27-31, no 46.
[946] See chapter V,2.2.

city-states a description of the granted areas is sometimes included. In some cases, this description is very detailed, so as to preclude all doubt as to what the grant consists of. For example, in the chrysobull of Isaac II Angelos to Pisa in 1192, the emperor describes in great detail the areas granted to the Pisans.[947] It includes, for example, the length and the perimeter of the specified areas as well as their exact borders, information about what the Pisans were allowed to build and in what manner, etc.

Some acts of delivery referring to the Italians have also been preserved. In the registration of the Byzantine imperial acts collected by Dölger, we are informed that the emperor had issued a decree (*praeceptum*) addressed to the prefect of the city, Basil Kamateros ordering him to proceed in pointing out the borders of the Genoese district Koparion in Constantinople.[948] Dölger mentions that there are indirect references about this decree in an act (*praktikon*) that was drawn up by Staurakios Glykas and Anzas in 1170.[949] In an earlier chapter we saw that this act was included in the collection of *Cod. Dipl. Genova* by C. I. di Sant' Angelo after the first chrysobull of Manuel I Komnenos.[950] Moreover, in the edition of C. I. di Sant' Angelo, we saw that an act in Latin is inserted after the chrysobull of Isaac II Angelos to Genoa in 1192[951]. This act seemed to be an act by the *logothetes tou dromou* Demetrios Tornikes and it dealt with the extension of the Genoese district in Constnantinople. It included an act of delivery (*praktikon paradoseos*) drawn up by the Byzantine officials Constantine Pediadites, Sergios Kolybas and Constantine Petriotes where a detailed description of the granted area was made. At the end of the act of delivery signatures of the three Byzantine officials followed.[952] When examining the acts for Genoa we came across another example of such an act of delivery (*praktikon paradoseos*). In a decree from 1201, Alexios III Angelos had ordered three Byzantine officials to deliver the granted areas to the Genoese envoy.[953] After the order of the emperor, there is a description of the granted areas, as well as the corresponding rents that the Genoese received.[954] Finally, at the end of the document, the names of the three Byzantine officials with their titles and signatures appeared.

Hence, the so-called *praktikon paradoseos* included a detailed description of the grants of the Genoese (including, for example, rents that they will receive from people who are renting a building in the area that is granted to

[947] Reg. 1607, Müller, *Documenti*, p. 47, line 20 – p. 49, line 35, no XXXIV see chapter III,3.2. See also the description of the granted areas in Reg. 1373 in Pozza and Ravegnani, *Tratttati*, p. 72, line 9 – p. 74, line 11, no 5, see chapter II,4.3.1.
[948] See Dölger, *Regesten*, p. 258 (Reg. 1495).
[949] Dölger, *Regesten*, p. 258 (Reg. 1495).
[950] *Cod. Dipl. Genova*, vol. II, p. 119, line 14 - p.121, line 12, no 52; See the examination of Reg. 1497 in chapter IV,2.2.1.
[951] See the examination of Reg. 1609 in chapter IV,4.2.2.
[952] I have explained earlier in chapter V,2.2 what kind of right the Italians receive here.
[953] Reg. (Reg. 1661a [1663]). See chapter IV,7.
[954] For a detailed analysis of this act, see chapter IV,7.

the Genoese etc...), the date and the signatures of the officials. In the act of delivery it is also stated that the delivery has been made to the Genoese representative.[955] Many examples of acts of delivery by Byzantine officials can be found in acts referring to Byzantine monasteries of that time.[956] In one of the examined documents, namely the chrysobull by Manuel I Komnenos to Venice in 1148 the term *praktikon traditionis corporalis* is included.[957] In Byzantine legal texts of that time, we come across the term "σωματική παράδοσις." For example, in the act of *protos* Gabriel of 1141 towards the monastery of Lavra by which the property of a monastery is transfered (as a *metochion*) to another monastery, it is mentioned:

…ἐστάλησαν οἱ τὴν σωματικὴν παράδοσιν τῆς εἰς μετόχιον ὀνομασθείσης μονῆς τοῦ Καλύκα ἐνεργήσοντες εὐλαβεῖς καθηγουμένοι….[958]

... the pious abbots who will make the material[959] delivery of the monastery which has become a *metochion*…..[960]

The issue of a corporal delivery is connected to the role of a written act in general. This brings us back to the discussion of the legal effect of a document in Byzantine law, whether it is constitutive or declaratory, and in particular, to the issue of delivery *by a document* (*traditio per cartam*), an issue that has been studied by many scholars in the past.[961] By examining expressions used in Byzantine legal acts of monasteries, Brandileone has argued that in Byzantine law the delivery was made by a *traditio per cartam*.[962] Zepos, who has also thoroughly studied the issue of *traditio* in Byzantine law, reached the same conclusion.[963] As Zepos states, in Byzantine law a notarial document was in fact constitutive and after it was drawn up and signed, its delivery to the entitled person served only as a proof of the transaction; the legal transaction had already been concluded. In other words, the crucial moment for the transaction

[955] "...καὶ παράδοσιν τῶν τοιούτων πεποιήκαμεν πρὸς τὸν συνεπόμενον ἡμῖν καὶ παραλαμβάνοντα δικαίῳ τοῦ κάστρου Γενούας, τὸν συνετώτατον ἀποκρισάριον 'Ωτομπόνον Δελακρόζα..." in *MM*, vol. 3, p. 50, lines 13-16, no XI. See chapter IV,7.

[956] See for example, the act of delivery of the notary Adam in 1073 in Nystazopoulou, *Patmos*, pp. 3-35, no 50. In the same edition, see the act of delivery of Tzanzis in 1088, p. 36-45, no 51; the act of delivery of Charsianitos in 1089, pp. 46- 69, no 52; and the act of delivery of the notary Theologites in 1089, pp. 70-75, no 53.

[957] Reg. 1373. See Pozza and Ravegnani, *I trattati*, p. 72, line 2, no 5.

[958] *Actes de Lavra*, p. 317, lines 7-11, no 61 and p. 326, lines 62-63, no 63.

[959] In the sense of "physical delivery".

[960] Because it had been deserted and ruined, the monastery of Kalyka had become a *metochion*; see *Actes de Lavra*, pp. 315-18, no 61.

[961] Brandileone, *La traditio*, pp. 15-36. In this book there are more articles connected with the issue of *traditio per cartam*. See also Zepos, *Paradosis* and Brunner, *Zur Rechtsgeschichte*.

[962] For example: "…ἀρκοῦντος σοι τοῦ παρόντος ἐγγράφου ἡμῶν καὶ ἀντὶ πρακτικῆς σωματικῆς παραδόσεως…" See Brandileone, *La traditio*, p. 18 and Zepos, *Paradosis*, p. 201.

[963] See Zepos, *Paradosis*.

was that in which the act was drawn up and signed by the parties, the witnesses and the notary.[964] In our acts, as we have already mentioned, an act of delivery was necessary for the granting of this right to possess and use the immovable property; this was sometimes ratified by a Byzantine officer, but always had to be registered at the competent Byzantine office. No other condition is named for the granting of this right. Given the similarities of the procedure described in our documents to that in contemporary Byzantine monastic documents, it seems that the delivery described in our acts corresponds to the Byzantine tradition of the *traditio per cartam.* Moreover, the fact that an act is being made for the delivery strengthens the argument that what is being described here is similar to a right of an *emphyteusis*: what would have been the point of drawing up an act if it was only *possessio* that was being granted? At this point it is also worth taking a closer look at an expression used in the chrysobull granted by Isaac II Angelos to Venice in 1189 related to the delivery of the immovable property that was granted. In that document, it is stated that some districts and landing areas in Constantinople have been delivered to the Venetians *by an act of delivery* (*...per practicum eis tradita sunt...*)[965]. Referring to the *praktika traditionis* of the immovable property granted to Venice by the Byzantine emperors, David Jacoby makes the following interesting comment:

> "Note the singular for each of the documents and the plural for the pieces of property. The physical transfer of the *praktikon* conferred legal confirmation to the transfer of the latter. The form *praktiko* in the Venetian document of 1090[966] and in the chrysobulls of 1148 and 1187 mentioned above corresponds to Greek *praktiko* (πρακτικῷ), which is a *dativus instrumentalis* pointing to the formal transfer of property by *means* of such a charter".[967]

I agree with Jacoby that by the *praktikon* the transfer is legally confirmed. However, as I have explained, I do not believe that it is the property that is being transferred but the right to use the property. We are dealing with a right that is similar to that of *emphyteusis*.[968]

[964] Zepos, *Paradosis*, pp. 240-242.
[965] Reg. 1590. See Pozza and Ravegnani, *I trattati*, p. 107, line 23, no 9.
[966] This is a Venetian document by which the doge grants property in Constantinople that was received by Alexios I to the Venetian monastery of San Giorgio Maggiore, see Lanfranchi, *SGM*, vol. II, p. 169, no 69.
[967] Jacoby, *The chrysobull*, p. 200.
[968] See chapter V,2.2

2.4 Guarantees of the emperor

The hypothesis that the emperor granted to the Italians something more than just *possessio* is also strengthened by the guarantees of the emperor. In the examined acts, we see that after the grants have been made, the emperor often provides guarantees for these grants. Even if in the past the immovable property belonged to someone else, be that a person or a monastery for example, from the moment that the chrysobull is issued and the grant is made, it is the Italians who are allowed to use this property.[969] By order of the emperor, no one has the right to oppose these grants and sanctions are also included for people who violate the provisions of the chrysobulls. In some cases, the emperor adds that people who have lost their property because it was granted to the Italians, can request compensation from the state. If however, there is not sufficent compensation for all the people who have lost their property, they can not turn against the Italians because such is the will of the emperor because he has the right to dispose as he wishes of the property of his subjects.[970] This practice of the emperor resembles a case of expropriation; however, one could argue that elements of confiscation are also present because those who suffer loss as a result of this act would not necessarily be compensated. In this instance, the emperor acts as the ultimate sovereign to his subjects since he granted property to the Italians which actually belonged not to the state but to Byzantine subjects, private persons or institutions, such as monasteries. The legal issue that arises here is to what extent private property was protected in Byzantine law.[971] The Byzantine historian Theophanes recounts that emperor Nikephoros I had seized private property in the past without paying any compensation at all, and the historian Skylitzes states that emperor Basil II had done the same.[972] Many writers complained about this bad imperial habit.[973] Michael Attaleiates also describes that emperor Isaac Komnenos confiscated the property of private persons without taking into

[969] See for example, Reg. 1081 in chapter II,2.2.

[970] See the examination of Reg. 1607 to Pisa in chapter III,3.2 and Reg. 1609 to Genoa in chapter IV,4.2.2; see also Maltezou, *Les Italiens*, pp. 178-79.

[971] Kazhdan has dealt with this question. See for example, Kazhdan, *Do we need*, 1-28, especially p. 14-21. After completing this book I came across the article by Smyrlis, *Private Property*, in which he examines the emperors' donations of immovable property to the Italian city-republics in the Komnenian period. While I agree with some of his arguments, I have differents views on some points which refer to the legal terminology and the legal content of these donations. In particular, as I have explained, based on these imperial documents, I do not believe that the Italians received full ownership of these properties (see especially chapter V,2.2). Moreover I distinguish between cases of confiscations and expropriations (see V,2.4).

[972] See *ODB*, vol. 1, p. 494 with references to Theoph. 487/27 – 488/1 and Skyl. 340/88 – 95. and I would also add Theoph. 487/16.

[973] *ODB*, vol. 1, p. 494.

consideration the chrysobulls granted to these persons by which their possessions were confirmed.[974] Ecclesiastical property was also vulnerable to such practices by the Byzantine emperor, especially in war time.[975]

There is a distinction here between two different legal situations: cases of confiscation and those of expropriation. There is no doubt that the emperor is in a position to confiscate private property and do what he wants with it. In the *Peira*, we read something connected to the emperor's ability to donate other people's property which has been confiscated. It is mentioned that once the emperor has donated property belonging to someone else, namely property that has come to the emperor by way of confiscation (εἰσκομιδή), the act of donation can not be contradicted.[976] Then there are the cases of expropriation which are also described in our acts. It is clearly mentioned in the examined material that when the emperor grants property belonging to others, compensation can be asked for by the former owners from the state. In fact, in the corresponding chrysobull it is evident that we are dealing with a legal procedure here. I quote once again part of a passage that I have examined earlier:

...τῶν ἀφαιρεθέντων ταῦτα τὸ ἱκανὸν σχεῖν μελλόντων ἀπὸ τοῦ δημοσίου. κἄν μὴ σχῶσι δὲ, μὴ κατὰ τῶν Γενουιτῶν ὀφειλόντων ἐνάγειν, ἀλλὰ κατὰ τοῦ δημοσίου αὐτοῦ ἐντὸς τοῦ νενομισμένου καιροῦ· κἄν μὲν τύχωσιν ἀντι-σηκώσεως, ἔχειν τὸ ἱκανόν τοῦ δοθέντος, κἂν μὴ τύχωσι δὲ στέργειν ὡς τῆς βασιλείας μου ἐπ' ἀδείας ἐκ τῶν νόμων ἐχούσης ἐν εἰδήσει δωρεῖσθαι καὶ τὰ ἀλλότρια, καὶ οὕτω δωρουμένης τὰ τοιαῦτα τῷ τῆς Γενούης πληρώματι.[977]

...deductis iis quae iuste solvenda sunt a publico. si vero non receperint, non contra singulos Genuenses debitores procedatur, sed contra publicum ipsum intra statutum tempus, et si quidem obtigerit compensari, habeant iustum ratione dati: si vero non obtigerit, acquiescant in protectione maiestatis meae, quae potest ex legibus scienter largiri etiam aliena, et sic tribuentur talia populo Genuensi.[978]

...the people from whom these things have been taken will receive compensation from the state. And if they do not receive compensation, it is not allowed to bring an action against the Genoese but against the state within the legal time; and if they receive compensation they should be satisfied with what is given, but even if they do not receive any, they must be resigned to that, because my Majesty is entitled by law wittingly[979] to grant even

[974] Attal., p. 61/6-8: "διὸ καὶ πολλὰ μὲν ἰδιωτικὰ πρόσωπα πολλῶν ἀπεστέρησε κτήσεων, παριδὼν τὰς χρυσοβούλλους τούτων γραφὰς, δι' ὧν αὐτοῖς τὰ τῆς δεσποτείας ἡδραίωντο·... ". Charanis has refered to this passage of Attaleiates and has translated it in Charanis, *Monastic properties*, p. 68.

[975] *ODB*, vol. 1, p. 494. See also Charanis, *Monastic Properties*, especially pp. 67-72.

[976] *Peira*: 36,12 in Zepos, *JGR*, vol. IV, p. 145: ""Οτι ὅτε βασιλεὺς δωρήσεται ἰδιόκτητον πρᾶγμα, ἤτοι τὸ περιελθὸν αὐτῷ ἀπὸ εἰσκομιδῆς, οὐκ ἀνατρέπεται ἡ πρᾶσις."

[977] *MM*, vol. 3, p. 33, lines 24-30, no V.

[978] *Cod. Dipl. Genova*, vol III, p. 59, lines 1-6, no 21.

> that which belongs to someone else and thus grants [these areas] to the Genoese people.

It is explicitly mentioned in this passage that if the former owners do not receive compensation they cannot bring an action (ἐνάγειν κατὰ τοῦ δημοσίου) against the Genoese but against the state within the legal time. The emperor removes private property and donates it to others (here the Genoese) but there is a legal procedure prescribed for the former owners to ask for compensation. If the emperor could do what he wanted with the property of others then there would have been no compensation at all provided. However, in the end, the emperor adds that even if the compensation is not sufficient for all of them then such will be the case because he is entitled to grant such property to others. After all, the Byzantine emperor was the "pinnacle of Byzantine political structure and society" who represented God on earth.[980]

As Zachariä von Lingenthal notes, in general, Byzantine legislators followed Justinianic law in matters dealing with acquisition and loss of ownership.[981] Especially with regard to whether foreigners could actually own immovable property in Byzantium, we read in a new *Basilica Scholion* that according to older laws, it is allowed for an owner to sell his property to whomever he wishes without any restrictions whatsoever, with one exception: it is forbidden to sell land of a *metrokomia*, (μητροκωμία)[982] to a foreigner.[983] Perhaps this prohibition is related to the role that this type of district played in the collection of taxes. Land of a *metrokomia* is allowed to be sold only to the inhabitants of the same *metrokomia*.[984] The same *Basilica scholion* informs us that according to a novel by Constantine VII Porphyrogennetos, it is permitted in every city and province for the owner of an immovable property to dispose of his property, as he wishes, including selling it, giving it in *emphyteusis* or leasing it. However, before doing so, he has to announce this to the persons

---

[979] Meaning in full knowledge of what he is doing; this is the ultimate sovereignty of the emperor. See on this chapter V,2.4.

[980] *ODB*, vol. 1, p. 692.

[981] See Zachariä von Lingenthal, *Geschichte*, pp. 215-217.

[982] It literally means a "mother-village" and it is used to describe a rural district, see *ODB*, 2, p. 1358.

[983] BS 306/24-28 (sch. CA 5 ad B. 11,1,60 = D. 2,14,61): "Ἀλλ' ἀπὸ μὲν παλαιῶν νόμων ἐξῆν τῷ δεσπόζοντι πράγματος βουλομένῳ τοῦτο ἐκποιήσασθαι μετατιθέναι αὐτό, πρὸς ὃν ἠβούλετο, ἀκωλύτως, καθώς φησιν τὸ κα' . κεφ. τοῦ ε" τιτ. τοῦ ιθ' . βιβ. μόνων τῶν μητρό<κωμητῶν> κωλυομένων πρὸς ἐξωτικὸν ἐκποιεῖν τὰ αὐτῶν ἀκίνητα." See also B. 55,5,1 = C. 11,56,1 (BT 2537/6-7): "'Εὰν μητροκομήτης ἐκποιῆσαι θελήσῃ πρᾶγμα, μηδενὶ ἐξωτικῷ ἐκποιείτω αὐτό...".

[984] "…ἕτερος δὲ νόμος ἄντικρυς ἀπαγορεύει, μὴ ἐξεῖναι τινι πιπράσκειν ἑτέρῳ ἢ μόνον τοῖς τῆς ἰδίας μητροκωμίας οἰκήτορσιν." in the novel by Romanos (Reg. 595) I in Zepos, *JGR*, vol. I, p. 201, coll. III. Nov. 2.

entitled to a right of preemption (προτίμησις).[985] Moreover, ownership of immovable property, especially rural land, was a complicated issue given the many different categories of farmers and land-owners.[986]

In the examined material, as I have already mentioned, the emperor includes guarantees for his grants. This practice can be explained by the following. Firstly, these grants were made to foreigners, something the Byzantines were clearly not pleased about. Secondly, as explained above, it seems as though sometimes the granted areas did not belong to the state,[987] but to other people or monasteries and this must have caused conflicts.[988] This is why, after the grants, the emperor usually added more provisions by which he guarantees the grants made. In other chrysobulls of that time, we sometimes come across guarantees of the donations being made, but usually these guarantees are addressed to Byzantine officials: the emperor orders that no official has the right to violate what is provided in the chrysobull.[989] Such orders are also mentioned in the examined privilege acts in favour of the Italians; however, in our documents it is clear that the guarantees refer to all people who could violate the grants (including private persons or monasteries). These guarantees are sometimes even more specific. In the chrysobull by Alexios I Komnenos to Venice for example, it it mentioned that two monasteries in particular are not allowed to oppose these grants.[990] In the examined acts, the emperor includes guarantees after the grant for a third reason. As I have suggested earlier, the Italians did not become owners of the immovable property in Constantinople, but were allowed only to use this property and profit from it. Their right resembled that of *emphyteusis*.[991] In other words, the nature of these grants could have raised questions about the legal protection of the Italians with regard to this property. If the Italians were

[985] BS 306/28-34 (sch. CA 5 ad B. 11,1,60 = D. 2,14,61): "Σήμερον δὲ ἀπὸ νεαρᾶς τοῦ βασιλέως κυρίου Κωνσταντίνου τοῦ Πορφυρογεννήτου ἐν πάσῃ πόλει καὶ ἐπαρχίᾳ ὁ ἔχων τι ἀκίνητον βουλόμενος τοῦυο κατὰ πρᾶσιν ἐκποιήσασθαι ἢ ἐμφύτευσιν ἢ καὶ μισθωτικῶς ἐκδοῦναι οὐκ ἄλλως δύναται τοῦτο πρὸς ξένον τινὰ καὶ ἀλλότριον μετρεῖσθαι, εἰ μὴ πρότερον διαμαρτύρηται τοὺς ἔχοντας δίκαιον προτιμήσεως..." See the novel of Constantine VII Porphyrogennetos (Reg. 656) in Zepos, *JGR*, vol. I, pp. 214-17, col. III, Nov. 6. On the right of preemption in Byzantine law see, for example, Papagianni, *Protimesis*, pp. 1071-1082.

[986] See Zachariä von Lingethal, *Geschichte*, pp. 218-279. For a general overview of the matter see Danstrup, *State*.

[987] Otherwise the provision about the compensation given to those who lost their property as a result of the grants to the Italians does not make sense. See also Magdalino, *Maritime*, pp. 220ff., especially p. 223 and Magdalino, *Constantinople*, pp. 79ff.

[988] In one case in particular the emperor granted the districts of the French and the Germans to the Venetians (Reg. 1590); for this matter, see Nicol, *Byzantium and Venice*, p. 116.

[989] See for example *Actes de Lavra*, p. 247, lines 34-40, no 46; p. 259, lines 48-53, no 48; p. 263, lines 69-74, no 50; p. 274, lines 33-36, no 53.

[990] See Reg. 1081 in chapter II,2.2.

[991] See chapter V,2.2.

not owners of this property in the full sense of the word, the Byzantines who had lost their property could turn against the Italians and seek legal redress. By including guarantees for these grants in favour of the Italians, the emperor in a way 'took care' of the legal problems that could arise from the nature of these grants of immovable property. The Italian interests were in any case protected by imperial order. Making a comparison here with Roman law, this practice of the emperor is reminiscent of the practice of the *praetor* to protect the *possessor* in some cases more than the owner himself.[992] In our case, it is the Italians who are better protected than the real owners, who had lost their property by order of the emperor.

[992] For example, when a *res mancipi* has been transferred by a *traditio* and not a *mancipatio*; in this case the possessor is called "a bonitary owner" see Nicholas, *Roman Law*, pp. 125-26 and Lokin, *Prota*, pp. 141-42.

2.5 Documentation of this property in Italian sources: some examples[993]

A related question, as stated in the beginning of this section, deals with the nature of the party that received the grant by the emperor, namely whether that was a city, or a monastery, or even private persons, such as the Italian merchants living in the Byzantine capital, for example. Based on the information contained within our documents, it is clear that the grants were made in general to the corresponding Italian city-state. The grants were thus made to the Venetians, Pisans or Genoese. It is not mentioned, for example, that the grants are made to the doge of Venice; it is the Venetians who receive them.[994] As explained earlier, the Venetians did not receive full ownership of the areas in Constantinople.[995] Some insight into the question of how the Italians used the immovable property granted to them by the Byzantine emperors is provided by documents from Venetian archives, which have provided a number of interesting examples.

In 1090, doge Vitale Falier granted part of the Venetian property in the Byzantine capital to the monastery of San Giorgio Maggiore. In the corresponding document, the areas that were granted to the Venetians by Alexios I Komnenos are described as: "….quarum nos ab Imperatore Alexio invenimus pro grossovoli et pratico cartulas…".[996] In the same document, it is mentioned, amongst other things, that according to the imperial charters of Alexios I Komnenos the Venetians had come into possession of these areas in Constantinople, and that the possession of this property was, from this point on, granted to the monastery of San Giorgio Maggiore. According to this document, it was confirmed that the monastery had the right to possess and use this property, to build workshops (and work there), to make improvements upon it and to possess it in perpetuity, but it was not allowed to alienate the property; the property was to permanently remain in possession of the

[993] Examining how the Italians used the immovable property granted to them by the Byzantine emperors and the documentation about this property in Italian sources exceeds the scope of this thesis. In this section I present only a few examples. Maltezou has examined documents that deal with the Venetian property in Constantinople in Maltezou, *Il Quartiere*, pp. 30-61 and in *Les Italien*s. Also Borsari in *Venezia e Bisanzio*, especially pp. 31-61.

[994] Only in the chrysobull of 1198 (Reg. 1647) is it stated by the emperor that he sends the chrysobull by means of his envoys to the doge of Venice and the whole population of Venetians: "...presens chrysobolum verbum suum transmisit nobilissimo et fidelissimo imperio meo protosevasto et duci Venetie plenitudi per imperii mei legatum..." in Pozza and Ravegnani, *I trattati*, p. 128, lines 3-6, no 11.

[995] See chapter V,2.2.

[996] *TTh*, vol. I, p. 56, lines 10-12, no XXV. The document is also published in Lanfranchi, *SGM*, vol. II, p. 169, lines 18-19, no 69; again we see that the Venetians use the Byzantine terminology when referring to the grants of the emperor.

monastery.[997] In other words, the monastery received this property but with a ban on alienation.

In an act dated 1184 or 1186, the prior of Saint Nicolò in Constantinople, Domenico Baffo, conceded an area in the Byzantine capital to Çilio Marrubiano for nine years. The verb that is used to describe this transaction is *concedere* and the act by which the transaction is completed is mentioned as a *cartula concessionis*.[998] It is also mentioned in this act that this area was conceded in the past to the monastery of Saint Nicolò by doge Vitale II Michiel and once again the terms used to describe this action are *concedere* and *dare et concedere*.[999] According to this act, Çilio Marrubiano has the right to build a house in this area and can use it as he wishes: he can live in it or transact his business from it and can do whatever he wants with the house generally, including renting it or even selling it.[1000] Actually in legal terms what I think is being sold here, is the right to use this property. More acts have been preserved by which Venetians (usually a monastery) concede immovables in Constantinople against an annual payment to other Venetians for a period of time. These subtenants have the right to build houses to be used as they wish, including selling them.[1001] Also in these cases I think, that what is actually being sold is the right to use the property. Since the Venetians were allowed to sell the right of use of these properties, questions arise when the original lease period ended. In this case, would the right of use of the immovable property, including that of the house, be returned to the monastery? The aswers to these questions can be found in an act of 1184 by which Leonardo, the abbot of the monastery San Giorgio Maggiore, concedes an area situated in Constantinople to Ionzolino Michael for ten years.[1002] The latter promises to construct a house upon this property at his own expense and he retains the right to sell this house to whomever he pleases within that ten year period. After the ten years have

[997] "...et ab prememorato Imperatore Alexio nobis advenit per jam dictas imperiales cartulas, ut in eis continetur, et secundum quod ad nostrum jus hactenus possessum fuit, eo modo, ut predesignatum est transacte, in vestra permaneat potestate habendi, tenendi, ergasteria construendi, laborandi, regendi, meliorandi et in perpetuum possidendi, minime autem ab ipso monasterio subtrahendi vel alienandi in alia parte; sed ad salvationem et utilitatem ejusdem monasterii in perpetuum permanendi" in *TTh*, vol I, p. 57, lines 14-22, no XXV.

[998] Lanfranchi, *SGM*, vol. III, p. 242, lines 5-8, no 462: "…ego quidem Dominicus Baffo monachus et prior Sancti Nicolay de Constantinopoli per presentem concessionis cartulam concedo [...] tibi quidem Çilio Marrubiano […] unam videlicet peciam de terra…" and line 26, here in combination with the verb 'to dare': "..do et concedo eam tibi…".

[999] Lanfranchi, *SGM*, vol. III, p. 242, lines 11-14, no 462: "Quam vero terram dominus Vitalis Michael bone memorie dux Venecie […] dedit et concessit Dominico Contareno abbati Sancti Nicolay…"

[1000] Lanfranchi, *SGM*, vol. III, p. 243, lines 1-6 and 15-18, no 462.

[1001] See the six examples mentioned by Borsari, *Venezia e Bisanzio*, p. 44; here however in case of sale the patriarch has a right of pre-emption.

[1002] Again, the terminology is the same: "…prefata pecia de terra michi datam habes per concessionis cartulam…" in Lanfranchi, *SGM*, vol. III, p. 212, lines 9-10, no 437. Maltezou has discussed this act in Maltezou, *Les Italien*s, pp. 182-183.

passed, Ionzolino has to return both the area conceded to him and the house to the monastery. In other words, the house built by Ionzolino -even if sold- will end up with the monastery. This area in Constantinople was granted by the doge to the monastery and it is the monastery that has the right to possess and use it including the right to lease it for a specified period. The fact that the house built by the subtenant will end up with the monastery follows the Roman law principle of *superficies solo cedit*, which means that whatever is attached to the ground belongs to the owner of that ground; in this case however, the monastery is not the owner but has a right resembling that of *emphyteusis*.[1003]

Up to now, the examples we have seen refer to transactions between the Venetian themselves. It is interesting to note that there are also some testimonies that refer to transactions between Venetians and Byzantines. For example, in an act of 1188 the Byzantine Theodore de Calo Thecharisto[1004] promises to Domenico, the prior of the monastery San Marco in Constantinople, to pay an annual sum for a house that was conceded to him for the period of ten years.[1005] Among the witnesses is a Byzantine: "…Iohannis Criticos habitatoris in Constantinopoli".[1006] The act is also signed by a Venetian judge in Constantinople.[1007] We come across the same Byzantine person in an act of 1195 in which he promises to the abbot of the monastery San Giorgio Maggiore an annual payment for a house that was conceded to him for 13 years.[1008] The legal terminology used in granting the concession is the same and the Byzantine has the right to do with this house what he pleases. [1009] Among the witnesses in this act are two Byzantines who are present but do not know how to write.[1010] The act is also signed by a Venetian judge.[1011] These examples

[1003] On the actual right that the Italians received by the imperial grants related to property in Constantinople see chapter V,2.2.

[1004] "…promitto ego quidem Theodorus de Calo Thecharisto grecus habitator in Constantinopoli…" in Lanfranchi, *SGM*, vol. III, p. 295, lines 3-4, no 500.

[1005] Lanfranchi, *SGM*, vol. III, pp. 294-296, no 500. See also Maltezou, *Il Quartiere*, p. 45, no 13.

[1006] "Signa testium rogati a predicto Theodoro, Iohannis Suriani, Iohannis Criticos habitatoris in Constantinopoli, qui interfuerunt et pro se scribere rogaverunt." In Lanfranchi, *SGM*, vol. III, p. 296, line 25, no 500.

[1007] "Ego Marcus Martinacius iudex in Constantinopoli vidit in matre testis sum in filia" in Lanfranchi, *SGM*, vol III, p. 296, lines 10-11, no 500.

[1008] He is mentioned there as "Iohannes de la Cretiky grecus habitator in Constantinopoli" Lanfranchi, *SGM*, vol. III, p. 399, lines 4-5, no 581.

[1009] "…michi dedit en concessit per cartulam concessionis…" in Lanfranchi, *SGM*, vol. III, p. 399, lines14-15, no 581, and "…de qua concessit michi plenam potestatem standi et permanendi in ea et mea servicia et negocia faciendi cum quibuscumque michi bonum apparuerit et aliis dandi en concedendi cui voluero usque ad completum terminum tredecim annorum, nullo michi homine contradicente." In Lanfranchi, *SGM*, vol. III, p. 399, lines 22-26, no 581.

[1010] "Signa testium rogatorum nesciencium scribere, Georgii Spano greco et Nicole Osculicas similiter greco, qui interfuerunt et pro se subscribere rogaverunt." in Lanfranchi, *SGM*, vol. III, p. 400, lines 29-31, no 581. See also Maltezou, *Les Italiens*, p. 186.

show that the Venetians had the right to concede their immovable property not only to Venetians (or other Italians perhaps), but also to Byzantines. It proves also that the Venetian district was occupied mainly by Venetians but examples of Byzantines renting houses and living there do exist. In addition, in the chrysobull of Alexios I Komnenos in 1082, it is mentioned that the emperor grants to the Venetians *ergasteria* (workshops) where both Venetians and Byzantines live.[1012] The fact that Byzantines were also used as witnesses in acts by which Venetian property was conceded to Byzantines is also interesting. It is logical, after all, that both parties want to be reassured that the terms of the transaction will be observed and both use their own witnesses to achieve this. The appearance of both Venetian and Byzantine witnesses strengthens the sense of duty to observe the obligations for each side. Finally, it is also worth mentioning that from 1184 until 1199, most of the acts by which the Venetians concede their immovable property to other Venetians (or Byzantines, as we have seen) are brought before a Venetian judge in Constantinople who confirms that he has seen the original document and has witnessed the copy.[1013] As we have seen, even in the cases where this property is conceded to Byzantine subjects, the act is brought before a Venetian judge; nothing is mentioned about the presence of a Byzantine authority.

So far, I have used examples of Venetian documents that refer to the grants they received in Constantinople because many such acts have been preserved and secondly, they have been edited and are therefore easy to access. The fact that many more such acts have been preserved regarding the immovable property of the Venetians in the Byzantine capital than that of the Pisans or the Genoese is logical since, as we have seen, Venice was the first of all the Italian cities to receive an area in Constantinople.[1014] In Pisan archives some acts have been preserved in which information is included about the administration of the immovable property that the Pisans were granted by the emperor in the Byzantine capital.[1015] In most of these acts, an ecclesiastical authority, the prior of a Pisan church in Constantinople, promises that he will faithfully handle the administration of the property of the Pisans in Constantinople; in some cases a record of this administration is actually

[1011] "Ego Bonifacius Sulmulus iudex vidi in matre testis sum in filia" in Lanfranchi, *SGM*, vol. III, p. 400, lines 35-6, no 581.

[1012] "Ad hec donat eis et ergasteria […], et in quibus Venetici permanent et Greci sicut ergasteriis…" in Borsari, *Il crisobullo*, (version A), p. 126, lines 33-37.

[1013] See Lanfranchi, *SGM*, vol. III, p. 243, lines 37-38, no 462,: "Ego Marcus Martinacius iudex in Constantinopoli vidit in mater testis sum in filia." I have followed the text of the edition; the correct text would have been: "Ego Marcus Martinacius iudex in Constantinopoli vidi in matri testis sum in filia." See also idem, p. 273, lines 5-6, no 483; p. 296, lines 10-11, no 500; p. 313, lines 32-33, no 514; p. 400, lines 35-36, no 581; p. 436, line 18, no 601.

[1014] See chapter V,2.1.

[1015] See Müller, *Documenti*, pp. 18-19 no XVI; p. 19, no XVII; pp. 68-70 no XLII; pp. 70, no XLIII; pp. 74-75, no XLVI; and, pp. 75-81 no XLVII.

included. In an act of 1197, the property that has been granted to the Pisans by the Byzantine emperor is described as: "...scale et de ipsa scala quam civitas Pisana habet apud Constantinopolim ex concessione sibi facta a domino Ysaachio, olim imperatore Constantinopolitano...".[1016]

As a last remark, I would like to add that there are a few acts in which, although the word *dominium* is not mentioned, a description is made of what the receiver is allowed to do and this description could be regarded as a definition of the right of ownership.[1017] Be that as it may, even if the Italians behaved as if they were owners, the fact remains that the emperor in the examined Byzantine imperial acts did not refer to the Italians as full owners of this property. Even if in the end the Italians gradually came to believe that they were owners of the property, it is important to remember that this was not the case according to the acts issued by the emperor.

[1016] Müller, *Documenti*., p. 69, no XLII.

[1017] See, for example, Lanfranchi, *SGM*, vol. III, p. 272, lines 7-11, no 483 : "…ita ut plenissimam virtutem et potestatem habeas predictam mansionem supra retinendi […] et retinendi, habendi, tenendi, donandi, locandi cuicumque volueris, sine mea et alicuius contradictione."; and a similar example on p. 312, lines 16-21, no 514.

2.6 Comparison to acts of the Crusader states

When comparing grants of immovable property to the Italians made by the Byzantine emperors to those made by the Crusader kings to the Italians it is important to bear in mind that the Crusader states form a special territory for issues related to legal questions because practices of feudal law have a significant influence here.[1018] As I have mentioned in the introduction to this chapter, I am aware of this problem but I would like to examine whether the relevant Crusader charters show some kind of similarities or differences with the examined Byzantine material. After all, both Crusader and Byzantine acts date from the same period and are directed to the Italians.

By the *Pactum Warmundi*, a treaty between the kingdom of Jerusalem and Venice in 1123-1124,[1019] the Venetians received immovable property in all cities of the kingdom of Jerusalem (except in the city of Jerusalem itself).[1020] In 1098, Bohemund, the son of Robert Guiscard, granted to the Genoese some immovable property in Antioch.[1021] In 1188, Conrad Montferrat granted privileges to the Pisans in Acre including immovable property there.[1022] Also in the case of the Italian possessions in the Crusader states there are documents by which the Italians concede this property for a period of time. For example, in 1154 the consuls of Genoa concede the Genoese possessions in Antioch to the brothers Ugo and Nicola Embriaco for a period of 29 years against an annual payment.[1023] In a document of 1164, doge Vitale II Michiel grants to the

[1018] See chapter V,1. About Italians in the Crusader states in general, see Favreau-Lilie, *Die Italiener*, especially pp. 382ff.

[1019] On the importance of this treaty, see Prawer, *Crusader*, pp. 221-226. See, however, Jacoby's objections in Jacoby, *The Venetian privileges*, pp. 155-175, especially pp. 174-175.

[1020] "In omnibus scilicet supradicti regis eiusque successorum sub dominio atque omnium suorum baronum civitatibus ipsi Venetici ecclesiam et integram rugam unamque plateam sive balneum, nec non et furnum habeant, iure hereditario imperpetuum possidenda, ab omni exactione libera, sicut sunt regis propria" in *TTh*, vol. I, p. 85, lines 16-21, no XL and "(...) ...ipsas, inquam, partes beato Marco vobisque Dominico Michaeli, Venetie Duci, vestrisque successoribus per presentem paginam confirmamus, vobisque potestatem concedimus tenendi, possidendi et quicquid vobis inde placuerit, imperpetuum faciendi." In *TTh*, vol. I, p. 87, lines 1-5, no XL.

[1021] "...Sic dono vobis prenotatis hominibus omnia prescripta ut ea habeatis, teneatis et possideatis et quibus ea cum vestris usibus commendaveritis" in *Cod. Dipl. Genova*, vol. I, p. 12, lines 5-7, no 7.

[1022] "Hec omnia predicta donavi et concessi predictis hominibus prefate societatis et eorum successoribus vel quibuscumque ea eis dare placuerit ad tenendum et vendendum et pignorandum seu alienandum et quicquid eis inde placuerit faciendum" in Müller, *Documenti*, p. 33, lines 30-35, no XXVII.

[1023] "……consules ……affirmaverunt ut Ugo Embriacus et Nicola frater eius et eorum heredes habeant et quiete possideant et teneant pro comuni Ianue, usque annos .XXVIIII. expletos, totum illud quod comune Ianue habet in Antiocheia…." in *Cod. Dipl. Genova*, vol. I, p. 298, lines 14-17, no 248.

church of San Marco some properties in Tyre.[1024] I think that what is meant by this grant is that the church of San Marco has the right to possess, to use and to let this property; nothing is mentioned about whether the monastery can actually sell this piece of property; the gerundia *dominandi* and *vendendi* are not included, for example. Regarding the terms used to define the Italian possessions in the Crusader states, we observe that the term *dominium* is not used, something that recalls the phraseology of our documents when it comes to a description of granting areas to the Italians in Constantinople.[1025] However, the fact that the word *dominium*, or a similar word, is not included in the above examples presumably has to do with the legal status of the property, for example, whether or not the property was given as a fief.[1026] Again these matters relate to the complicated issues of immovable property in the Crusader states, so even if there are aparrent similarities between these acts and the examined Byzantine imperial acts, it is not safe to make conclusions.

There is however, a point which deals with a fact in comparing these two kinds of categories of acts that can be added here. I think there is a clear difference in the way the grants of immovable property are being made to the Italians in the Crusader charters on the one hand, and in the Byzantine acts on the other. In the privilege charters of the Crusader states, there is often a long description of what the Italians are allowed to do with this immovable property; sometimes, although the word *dominium* itself is not used, the description of what the Italians are allowed to do with their property is more or less a definition of full ownership.[1027] This long description gives information about the legal status of the immovable property, which, as I have mentioned, is not always easy to define in the charters of the Crusader states. Also in the acts by which the Italians grant or concede immovable property granted to them (either in Constantinople by the Byzantine emperors or in the Crusader states by the Crusader kings), we come across long descriptions of what the person to whom the property is conceded is allowed to do. On the contrary, in the

[1024] "…….offerimus atque transactamus imperpertuum plenissima potestate habendi, tenendi, fruendi, locandi et omnes redditus de ipsis recipiendi, nullo unquam tempore aliquo homine contradicente….." in *TTh*, vol. I, p. 141, lines 7-10, no LIX.

[1025] For more examples, see *TTh*, vol. I, p. 90, lines 15-17 and p. 91, lines 16-18, no XLI; p. 102, lines 16ff., no XLVI; p. 214, lines 11-12, no LXXVI; *Cod. Dipl. Genova*, vol. I, p. 57, lines 11-13 and p. 58, lines 3-5 and Müller, *Documenti*, p. 16, lines 11-15, no XIII; p. 6, lines 27-28, no IV; p. 7, lines 44-45, no V; p. 34, lines 54-55, no XXVIII.

[1026] For the legal status of properties in the Crusader states and their categories in general see Prawer, *Crusader*, especially pp. 250-262 and pp. 343-357 and Lilie-Favreau, *Die Italiener*, pp. 382-437; see also the examples that Jacoby refers to in Jacoby, *The Venetian privileges*, pp. 157-58, p. 164.

[1027] See, for example, Müller, *Documenti*, p. 33, lines 30-35, no XXVII: "Hec omnia predicta donavi et concessi predictis hominibus prefate societatis et eorum successoribus vel quibuscumque ea eis dare placuerit ad tenendum et vendendum et pignorandum seu alienandum et quicquid eis inde placuerit faciendum.". And of the same document, lines 55-58: "…sed liberam suam partem unusquisque [habeat] ad tenendum et vendendum et alienandum et quicquid voluerit inde faciendum…".

Byzantine imperial acts directed at Venice, Pisa and Genoa we have seen that the terms "νομή" and "κατοχή" are usually used to describe the granting of immovable property to the Italians; however, there is no long description of what the Italians are allowed to do in those acts.[1028] Sometimes there is a long description of the granted area and information about it (its borders, the buildings situated in that area, the rents that the Italians will receive, for example), but there is not an enumeration of what the Italians are allowed to do in respect of the granted areas, something that we constantly come across in the Crusader charters. In other words, the Byzantines prefer to use Roman law terms in their documents. Hence, as far as legal terminology is concerned, there is a clear difference between the documents of the Westerners on the one hand (including charters of the Crusader kings and documents by which the Italians concede immovable property in their possession in Constantinople and in the Crusader states) and on the other, the documents of the Eastern world (Byzantine imperial acts towards the Italian city-republics). I am not at all suggesting that the Byzantine imperial acts from a legal aspect reflect a sophisticated level of Roman law, but it is worth noting that the Byzantines used the terminology of Roman law in describing the grants of immovable property they made to the Italians, while the Westerners preferred including a long description of what was and was not permitted on the granted immovable property. This Western practice must have also been connected to practices of feudal law.

What I also find interesting to point out is that in the privilege charters of the Crusader kings no reference is made to an act of delivery, and that is contrary to the practice of Byzantine imperial acts, where an act of delivery (*praktikon paradoseos*) is always referred to when immovable property is being granted.[1029] I have expressed my thoughts earlier on what exactly is being granted to the Italians by this act of delivery.[1030]

[1028] Sometimes there is a long and detailed description of the granted area, as mentioned above,or the rents, for example, that the Italians are entitled to, but there is no enumeration of the rights of the Italians, something that we have seen in the privilege charters of the Crusader states.

[1029] In some Crusader charters referring to Pisa we come across the term *carta*, but I do not believe that this *carta* is an act of delivery; it is more likely connected to agreements made with the Pisans. For example, in an act in 1168 by Almeric, king of Jerusalem, by which the Pisans are granted possessions, it is mentioned: "….Ut igitur omnia premissa in sempiternum data permaneant, cartam presentem testibus subscriptis et sigillo meo corroboro." In Müller, *Documenti*, p. 14, lines 28-30, no XI. For more examples, see Müller, *Documenti*, p. 8, lines 24-25, no VI; p. 15, lines 21-22, no XII and p. 23, lines 19-20, no XIX.

[1030] Chapter V,2.2.

3. Justice

3.1 Introduction

There are important differences between the city of Venice and the cities of Pisa and Genoa with regard to competent judges. It was already ordered in the first chrysobull granted to Venice in 992 that the Venetians were under the exclusive jurisdiction of the *logothetes tou dromou* for cases that arose between them, or between them and others. In the chrysobull of 1198 by Alexios III Angelos to Venice, detailed information is included about competent judges for the Venetians in civil and criminal cases. The main competent judge here is also the *logothetes tou dromou*. It is the first time in Byzantine legal practice that the *logothetes tou dromou* acts as a judge here on its own, and this is valuable information in understanding the functions of this Byzantine official. We know from the *Peira* that the *logothetes tou dromou* could take part in the judgement of cases but in these Byzantine chrysobulls directed at Venice he receives judicial duties on his own for the first time.[1031] Based on the information contained in the examined documents, the *logothetes tou dromou* did not have such general jurisdiction for all foreigners. Only in the two privilege acts in favour of Venice cited above,[1032] is he authorised to judge all cases between Venetians or between Venetians and others. While at this point, a comparison with other foreigners in Byzantium and their competent courts and judges could prove useful, the preserved sources do not provide sufficient information on this.[1033] According to the *Prefect's Book*, the competent authority for the foreign merchants in Constantinople was the so-called *legatarios*, but there is no evidence as to whether he also acted as a judge for their cases.[1034] It is also known that cases concerning Jews within the Byzantine capital were tried exclusively by the *strategos tou stenou* up until the time of Manuel I Komnenos. The fact that the Jews were subject to the exclusive jurisdiction of one specific official reminds us of the provision in the chrysobull of Basil II and Constantine VIII in 992 to the Venetians and the exclusive jurisdiction of the *logothetes tou dromou* for cases involving them.[1035] However, Manuel I

[1031] See Goutzioukostas, *Aponomi*, p. 184 with references to the *Peira*. On the reasons why this official has been chosen as a judge here, see the examination of Reg. 781 in chapter II,1.2.
[1032] Reg. 781 and Reg. 1647.
[1033] See, however, some examples mentioned by Laiou, *Institutional mechanisms*, pp. 161-181.
[1034] See *Prefect's Book*: 20. Περὶ λεγαταρίου in Koder, *Das Eparchenbuch*, pp. 132ff. (*Prefect's Book*: 20). See also Christophilopoulos, *Eparchikon*, p. 45.
[1035] See Laiou, *Institutional mechanisms*, p. 173.

Komnenos, who reorganized the system of justice, abolished this practice in 1166 and allowed the Jews to be judged by normal courts.[1036]

Treaties have also been preserved between the Rus and the Byzantines from the 10th century, but matters of competent courts or judges have not been regulated there.[1037] In these acts, however, legal co-operation is established between Byzantium and the Rus in matters relating to slaves, theft, shipwreck and salvage provisions. What is interesting from a legal point of view is that specific reference to applicable law is made in these acts, while it is something that we have not seen in our examined acts. For example, in the Russo-Byzantine treaties in 911 and 944, there are provisions that refer to theft and prescribe what the penalty would be, were the Rus to steal something from the Byzantines or the other way around. Malingoudi has suggested that the provisions referring to theft in the Russo-Byzantine treaties derive from both Byzantine law and Russian customary law.[1038]

In the examined Byzantine acts, it is ordered that Pisans and Genoese should be judged in imperial courts; however, no specific Byzantine authority is mentioned. This is different from what is provided for Venice in regard to competent judges. In other words, for both the Pisans and the Genoese there is no reference to specific competent judges, but it is provided in general that they will be judged at the imperial courts lawfully (κατὰ τὸν νόμον).[1039] It seems therefore, that Pisans and Genoese were also subject to Byzantine law and procedure. Moreover, a form of legal co-operation was slowly developing between the Byzantines and all three Italian cities. For example, in the case of Pisa, it is mentioned that Pisa will help in tracking down Pisans who have caused damage to the empire.[1040] It is added that if a Genoese plunders Byzantine territory, Genoa is to be notified and the Genoese will have to administer justice and punishment for the honour of the emperor; if the wrongdoers are not found, their goods (of the wrongdoers) will be seized. Such confiscation required co-operation between the two sides since the estate of the wrongdoer would have been located in Genoa. In the chrysobull of Manuel I Komnenos to Genoa in 1169, it is mentioned that the Genoese who have caused damage within Byzantium against a Byzantine or other people, will be judged at the imperial courts; it is added that the same holds true for Venetians and other Latin people. This information confirms that there must have been quite a number of cases involving Italians and, therefore, that such provisions

[1036] Starr, *The Jews*, pp. 21ff. See Zepos, *JGR*, vol. I, p. 426-427: "Συνηθείας οὔσης τοῖς Ἰουδαίοις δικάζεσθαι παρὰ μόνῳ τῷ στρατηγῷ τοῦ στενοῦ, ὁ κραταιὸς καὶ ἅγιος ἡμῶν βασιλεὺς διωρίσατο παρὰ παντὸς δικαστηρίου κατὰ νόμους τούτους δικάζεσθαι."

[1037] See Malingoudi, *Verträge*, and by the same author, *Der rechtshistorische*. The Rus or Rus' were of Scandinavian origin who set up their capital in Kiev and were gradually assimilated with the existing Slav population. See *ODB*, vol. 3, pp. 1818-22. On the Rus, see Franklin and Shepard, *The Emergence of Rus*.

[1038] See Malingoudi, *Verträge*, pp. 233-250 especially p. 250.

[1039] See Reg. 1255, Reg. 1488 and Reg. 1498.

[1040] See Reg. 1255.

were necessary. Moreover, it proves that the Byzantine emperors considered cases involving Italians very important and these cases were therefore dealt with in imperial courts. In the same chrysobull of Manuel I Komnenos, it is ordered that if a Genoese harms someone, he will be judged by a high imperial court and not by a foreign judge.[1041] In any case, it cannot have been coincidental that this provision about the foreign judge is included and actually repeated in a later chrysobull by the same emperor.[1042] Another question arises in relation to the specific competent court. In the chrysobull by Manuel I Komnenos to Genoa in 1169, it is mentioned that the accused or defendant Genoese will be judged by an imperial court, in which relatives of the emperor or of his men preside and judge the cases.[1043]

Another difference between the provisions concerning Venice on the one hand and those concerning Pisa and Genoa on the other is that jurisdiction is allowed to a Venetian judge. In the chrysobull by Alexios III Angelos to Venice in 1198, it is ordered that the Venetian representative in Constantinople was allowed to judge cases that arose not only between Venetians themselves, but also some mixed cases, namely between Venetians and Byzantine subjects under certain conditions.[1044] His jurisdiction covered some civil cases and one case of criminal law, described in detail earlier.[1045] These provisions remind us, in a way, of the principle of the competent court and the residence of the defendant. If the defendant is Byzantine, the judge is Byzantine; if the defendant is Venetian, the judge is Venetian; here of course the term "residence" is used in an expansive and broad way.[1046] To my knowledge, this is the first time that a foreign judge is allowed such jurisdiction within the Byzantine Empire and this is proof that the Venetians enjoyed greater legal privileges within Byzantium than did the other Italians. It is important to stress here that it was upon the Venetians' initiative that the emperor allowed such jurisdiction to their representative in Constantinople.[1047] Moreover, the fact that in that period Venice was undergoing an important legislative development and was busy drafting what might perhaps be called the first civil code of the city, could also have been influential in shaping the legal demands made by the Venetians to the Byzantine emperor.[1048]

[1041] I have already expressed my thoughts on why the foreign judge is mentioned here in particular; see the examination of Reg. 1488, chapter IV,1.2.2.
[1042] See Reg. 1498.
[1043] Under the examination of that chrysobull I have already expressed my thoughts on that court; see Reg. 1488.
[1044] See Reg. 1647.
[1045] See Reg. 1647.
[1046] See the examination of Reg. 1647. See also Macrides, *Competent court*, pp. 117-129, especially p. 125.
[1047] See the analysis of Reg. 1647.
[1048] See chapter I,2.

3.2 Comparison to acts of the Crusader states

As with grants of immovable property, a parallel with the practice in the Crusader states can also be drawn here for issues dealing with the jurisdiction allowed to Italian representatives.[1049] For example, a provision of the *Pactum Warmundi*, a treaty between the Patriarch of Jerusalem and Venice in 1123, is similar to the provisions for Venice contained in the chrysobull of Alexios III Angelos in 1198. Amongst other things, it is ordered by the *Pactum Warmundi* that if a Venetian raises a suit against a Venetian, the case will be judged by a Venetian court. The same holds true in cases where the Venetian is the defendant and the plaintiff is not Venetian. However, if a Venetian raises a suit against a non-Venetian, the royal court will be deemed competent.[1050] These provisions strongly remind us of those that we have studied in the chrysobull of Alexios III Angelos in 1198 by which he allows jurisdiction to Venetian judges. For a better comparison of both texts we quote them side by side in the following two columns:

Chrysobull, Reg. 1647:[1051]
…quod Greco quidem contra Venetico in pecuniaria causa agente, legatus, qui per tempora in magna urbe erit, tale iudicium perscrutetur;[1052] [….] Si vero Veneticus contra Grecum egerit, apud tunc cancellarium vie, vel eo a magna urbe absente, apud magnum logariastam querelam debeat proponere,….[1053]

Pactum Warmundi:[1054]
Si vero aliquod placitum vel alicuius negocij litigationem Veneticus erga Veneticum habuerit, in curia Veneticorum diffiniatur; vel si aliquis versus Veneticum querellam aut litigationem se habere crediderit, in eadem Veneticorum curia determinetur. Verum si Veneticus super quemlibet alium hominem, quam Veneticum, clamorem fecerit, in curia regis emendetur.

1049 For the jurisdiction allowed to the Italians in the Crusader states in general, see Favreau-Lilie, *Die Italiener*, pp. 438ff.
1050 *TTh*, vol. I, p. 87, lines 15-20, no XL.
1051 Pozza and Ravegnani, *I trattati*, p. 133, lines 14ff., no 11.
1052 The provision about formalities then follows: "et scripto quidem demonstrato a greco tavulario composito, certificato etiam ab aliquo iudicum veli et epi tu yppodromi vel symiomate alicuius predictorum iudicum, aut et ab aliquo pontificum vel ab aliquo tavulario vel iudice, per quem apud Veneticos dignum fide habeatur, secundum huiusmodi scripti comprehensionem decisionem cause superinduci." in Pozza and Ravegnani, *I trattati*, p. 133, lines 16-21, no 11.
1053 The formalities then follow: "et scripto quidem fide digno existente actori Venetico, quamvis a greco tavulario aut iudice veli et epi tu yppodromi, aut a pontifice vel Venetico tabulario vel iudice sit compositum, secundum hoc utique causa decidetur." in Pozza and Ravegnani, *I trattati*, p. 134, lines 19-22, no 11.
1054 *TTh*, vol. I, p. 87, lines 15-20, XL.

It is clear, that the *ratio* of both of these texts with regard to competent judges is the same. However, in the *Pactum Warmundi* it is mentioned that the Venetians are also allowed to judge cases arising between them in their own court. This is not mentioned in the chrysobull of Alexios III Angelos to Venice in 1198, but I think that this must have also been the case for the Venetians in Constantinople. It is completely logical that the Venetians would turn to their own judge for cases arising between them and there is evidence for that. In the examination of the chrysobull to Venice in 1198 by Alexios III Angelos,[1055] I referred to a Venetian document from 1150, which was a decision of the Venetian legate in the Byzantine capital who dealt with a case between Venetians there. The reason that the emperor does not mention the jurisdiction of the Venetian legate for cases arising between Venetians is probably because he considers it self-evident and of interest, after all, only to the Venetians themselves. The emperor is interested, however, in regulating the mixed cases, those arising between Venetians and Byzantines.

Here it is also interesting to add that some names of Venetian judges in Constantinople have been preserved. These Venetian judges verified acts of concessions relating to the immovable property of Venetians in the Byzantine capital. Every such act has been signed by Italians who act as witnesses (in some cases Byzantines are also used as witnesses, as I have explained earlier[1056]), by an Italian who acts as a notary and who has drawn up the act, and it is sometimes mentioned that the act has also been seen and verified by some other Italian notary and by an Italian judge in Constantinople. Since we are dealing with Venetian documents, the Italians mentioned in these acts must be Venetians. For example, in an act dated 1184 or 1186, the prior of Saint Nicolò in Constantinople, Domenico Baffo, conceded to Çilio Marrubiano an area in the Byzantine capital for a term of nine years. The act was also signed by someone called Marco Martinacio who was a judge in Constantinople and who verified that he had seen the original act.[1057] We come across the same name exercising the same function (verifying an act of concession relating to the immovable property of the Venetians in the Byzantine capital), in another three acts issued in Constantinople and dated 1187, 1188 and 1189 respectively.[1058] Two more names of Venetian judges have also been preserved who verified acts of concessions relating to the immovable property of Venetians in Constantinople: Bonifacio Sulmulo in an act of 1195 and John Vituri in an act of 1197.[1059] In an act of 1199 issued in Constantinople, Bonifacio Sulmulo is mentioned as judge of the Venetians.[1060] All of these Venetians are mentioned

[1055] Reg. 1647.
[1056] See chapter V,2.
[1057] Lanfranchi, *SGM*, vol. III, p. 243, lines 37-38 , no 462,: "Ego Marcus Martinacius iudex in Constantinopoli vidit in mater testis sum in filia."
[1058] Lanfranchi, *SGM*, vol. III, p.273, no 483; p. 296, no 500, and p. 313, no 514.
[1059] Lanfranchi, *SGM*, vol. III, p. 400, line 35, no 581, and p. 436, line 18, no 601.
[1060] "…et Bonifacii Sulmulo iudicis Venetorum…" in *SGM*, vol. III, p. 452, line 4, no 614.

as judges in Constantinople; however, what their jurisdiction consisted of and whether they could judge mixed cases is difficult to ascertain. Among the documents of San Giorgio Maggiore, there are 13 acts that were issued in Constantinople and refer to issues of the Venetians living there, including property concessions. The first such act was issued in 1176 and the last in 1199.[1061] These acts were drawn up and ratified by Italian notaries who were usually priests. It is obvious that before Venetian judges settled in the Byzantine capital, there was already a large number of Venetian priests who acted as notaries and were living there. These priest notaries were occupied in drawing up and ratifiying legal documents for the Venetians who were living there. This is also evidence that the Venetian community in Constantinople was growing. At some point, the presence of the Venetian priest notaries was not sufficient, thus the addition of judges who could better deal with the legal problems arising between Venetians (or between the Venetians and others perhaps) was necessary.

Another difference between the Byzantine chrysobull of 1198 and the *Pactum Warmundi* is that in the Byzantine document, strict formalities are included.[1062] In the Crusader states, it was not only the Venetians who were privileged to have some cases judged by their own judges there, but such privileges were also enjoyed by the Pisans and Genoese.[1063] These cases usually included matters raised between the Italians (for example between Pisans) and those in which the Italians were the defendants, something that strongly reminds us of the provisions included in the chrysobull of Alexios III Angelos to Venice in 1198.[1064] In the Crusader states, criminal jurisdiction generally remained with the royal courts.[1065] However, there is a difference between the jurisdiction allowed to the Venetians by the act of Alexios III Angelos, and the jurisdiction allowed to the Italians by the Crusader kings in the Crusader states. In the latter case, Venetians and Pisans had received a stronger kind of autonomy based on a territorial jurisdiction, as it is confirmed by the inclusion of different provisions. For example, according to the *Pactum Warmundi* of 1123, the Venetians have jurisdiction *over all inhabitants* living in their quarter

[1061] See Lanfranchi, *SGM*, vol. III, pp. 131-32, no 374 (year 1176); pp. 132-33, no 375 (year 1176); pp. 212-214, no 437 (year 1184); pp. 219-221, no 443 (year 1184); pp. 223-224, no 446 (year 1184); pp. 242-43, no 462 (year 1184 or 1186); pp. 271-273, no 483 (year 1187); pp. 294-296, no 500 (year 1188); pp. 311-313, no 514 (year 1189); pp. 399-401, no 581 (year 1195); pp. 433-436, no 601 (year 1197); pp. 451-452, no 614 (year 1199).

[1062] However, I have placed the provisions about the formalities in footnotes in order to have a clearer picture of the *ratio* of both passages regarding the competent judge.

[1063] See, for example, Prawer, *Crusader*, pp. 221ff.; Favreau-Lilie, *Die Italiener*, pp. 438ff. and Jacoby, *Conrad*, p. 195, pp. 207-208, pp. 212ff.

[1064] Reg. 1647.

[1065] See Favreau-Lilie, *Die Italiener*, pp. 438ff. and Jacoby, *Conrad*, pp. 195, 197-198, 204, 212, 214 (see, however, the example of Genoa, p. 208).

in Tyre.[1066] In 1187, Conrad of Montferrat granted both to Pisans and those considered Pisans (et qui Pisanorum nomine censentur) the right to be judged by Pisan authorities. Moreover, a territorial jurisdiction was also established for the Pisan district in Tyre since Conrad of Montferrat recognised that the Pisan representative was competent in dealing with matters raised by the people living within the Pisan district there.[1067] In that way, the jurisdiction granted to the Venetians, Pisans and later to the Genoese in the Crusader states creates a "kind of sovereignty" for these districts, a kind of sovereign immunity.[1068] In the case of Venice, the legal provisions of the *Pactum Warmundi* in 1123 established, as Prawson has described it, "a kind of autonomy, which we might regard, in accordance with the later Venetian interpretation, as a creation of a state within the kingdom."[1069]

We should keep in mind here that the conditions by which the Crusader kings granted legal privileges to the Italians were very different from the conditions by which the Byzantine emperors granted legal privileges to the Italians according to the acts that we have examined. In the first case, the crusaders were conquerers who "distributed" the freshly conquered land on the basis of their interests, and within this framework, areas were granted to the Italians as well as jurisdiction in those areas. Feudal practices that were known and widely used in the motherlands of the crusaders were not irrelevant in the creation of these autonomous Italian quarters in the Crusader states. In any case, the legal status of these properties and the autonomy of these areas have raised questions not only for modern scholars but also for those practising law at the time of the Crusades. Prawer remarks that "the creation of the autonomous Italian quarters created a plethora of legal problems which made the day of the crusader law practitioners."[1070] In the case of our documents, the Byzantine emperors did not allow territorial jurisdiction to the Italian districts in Constantinople. In fact, as I have mentioned, it is *only* the Venetians who are allowed to judge cases arising between Venetians and Byzantines under certain conditions within the Byzantine capital and this was allowed rather late, in 1198, on the eve of the fourth crusade. This jurisdiction is by no means extended to all the people living in their district. It is not mentioned in the chrysobull[1071] of Alexios III Angelos that the Venetian legate can exercise his jurisdiction within the boundaries of the Venetian district over the whole population living there regardless of its nationality, nor does the emperor

[1066] *TTh*, vol. I, p. 88, lines 1-3, no XL: "Preter ea super cuiusque gentis burgenses in vico et domibus Venetorum habitantes eandem iusticiam et consuetudines, quas rex super suos, Venetici habeant". This has been discussed by Prawer, *Crusader*, pp. 222ff. See also Jacoby, *Conrad*, p. 214.
[1067] Jacoby, *Montferrat*, pp. 196ff.
[1068] See Prawer, *Crusader*, pp. 221ff.
[1069] Prawer, *Crusader*, p. 222; see, however, the objections of Jacoby in his article, *The Venetian privileges*, 1997, pp. 155-175, especially pp. 174-175.
[1070] Prawer, *Crusader*, p. 243.
[1071] Reg. 1647.

recognise the sovereign power of the Venetian legate. The cases in which the Venetian legate can judge mixed cases are regulated particularly in the chrysobull of Alexios III Angelos. This legal privilege which was granted to the Venetians in 1198 was a desperate action of the emperor, an ultimate method to win back these "allies" who were becoming more and more of a threat to the empire.[1072]

Regarding the legal terminology relating to matters of justice used in the privilege charters of the crusader states and that used in the examined Byzantine documents, one more observation seems necessary. There is an expression used in the privilege charters of the Crusader kings in favour of the Italians, which is rather similar to an expression used in one of our acts, an expression that had raised some questions as to its exact meaning. In examining the chrysobull of Alexios I Komnenos to Pisa in 1111 (Reg. 1255) in particular, we came across the expressions "ἵνα διορθώσωνται τὴν ζημίαν δικαίως καὶ συμβιβαστικῶς" and "τὴν διόρθωσιν ποιήσωμεν δικαίως ἢ μετὰ συμβιβάσεως," that were translated into Latin as "emendabunt damnum iuste et concorditer" and "emendationem faciemus iuste vel concordia" respectively.[1073] I concluded that these expressions must have meant that the Pisans would repair the damage in court or by an out-of-court agreement, a mediation; however, there were some doubts as to the precise meaning of the word "concordia".[1074] In the privilege charters of the Crusader kings, we come across similar expressions, namely "….vel concordiam vel iustitiam eis faciam…..."[1075] and "…..transacto igitur impedimento meo, infra quindecim dies aut per concordiam aut per iustitiam secundum usus et institutiones curie mee, forisfacta et dampna illorum emendare faciam…."[1076] and "….eis emendari faciemus sive per concordiam, sive per justitiam….."[1077] From these expressions, and especially the term "iustitia," it is clear that in the privilege charters of the Crusader kings, it is also mentioned that damage will be repaired "in court or by an out-of-court agreement". I therefore believe that our argument about the meaning of the word *concordia* used in the chrysobull of Alexios I Komenos to Pisa as "out-of-court agreement," is strengthened by the similar expressions that we have quoted from the privilege charters of the Crusader kings.

In the examination of the chrysobull of Alexios III Angelos directed at Venice in 1198, by which the Venetian legate receives jurisdiction in mixed cases under certain conditions, the issue of the applicable law remains problematic. Which law was to be applied in these mixed cases? Byzantine or

[1072] See also Penna, *Legal Autonomy*.
[1073] See the examination of Reg. 1255 in chapter III,1,2.
[1074] See the examination of Reg. 1255 in chapter III,1,2.
[1075] Charter of privileges granted by Bohemund III, prince of Antiocheia to the Genoese in 1169 in *Cod. Dipl. Genova*, vol. II, p. 103, line 4, no 49.
[1076] Charter of privileges granted by Bohemund III, prince of Antiocheia to the Genoese in 1169 in *Cod. Dipl. Genova*, vol. II, p. 103, line 5-8, no 49.
[1077] Charter of privileges granted by William II, king of Sicily, to the Venetians in 1175 in *TTh*, vol. I, p. 173, lines 18-19, no LXV.

Venetian? While nothing was mentioned about this issue in that chrysobull, it would seem logical that Venetian law would have been applied since the judge himself was Venetian. On the other hand, since the Venetian legate could also judge cases involving Byzantines, one can not exclude the possibility that the Venetian judge must have also taken into account Byzantine law; for example, by means of a Byzantine official who assisted the judge. No such information is mentioned in the examined Byzantine acts, however, and these thoughts are just speculations. At this point, it is interesting to note that in a privilege charter by Reynald, prince of Antioch to Venice in 1153, it is clearly mentioned that the Venetians could apply their own laws and statutes in the court of their district in Antioch.[1078] However, in another privilege charter of the crusader kings issued in 1190, by which the representative of the city of Marseilles is allowed jurisdiction similar to that of the Italians, it is mentioned that he should promise that he will "dispense justice according to the custom of the land, and not that of Marseilles".[1079] As Jacoby has already remarked, this provision "was an important restriction, particularly striking in view of the right of Pisa, Genoa and Venice to apply their own laws in such cases...".[1080] Hence, the Italian cities were allowed to formulate and apply their own laws in their quarters in the Crusader states.[1081]

With the rise of trade in the 11th and 12th centuries, the issue of competent courts and applicable law in mixed cases must have been crucial. Inevitably, business raises legal conflicts, and the issue of competent courts and applicable law must have concerned Italian merchants especially, as they were the important protagonists in trade in the Mediterranean world and had begun to expand their trade networks to the Middle East as well. In the Crusader states, it seems that the Italians applied their own laws when they were allowed jurisdiction. This is clearly mentioned in the example that we quoted some lines above. Moreover, as explained earlier, the issue of jurisdiction in the Crusader states is of a territorial nature, since the Italians were allowed jurisdiction there within their own districts. That applicable law in mixed cases concerned Italians, can also be seen by the following information that we have regarding a court of foreigners that was functioning in Venice in the 12th century. In a capitulary referring to this court, it is mentioned that if a suit is brought before this court, the judge had to examine in the first place whether there were any treaties (*pacta*) with foreign leaders which had to be applied. If no such treaties

[1078] "Preterea concedimus ipsis Veneticis tenere curiam suam sancti Marci in funditio suo in Antiochia, et facere iuditia sua libere et quiete secundum legem et statuta eorum, ipsis eisdem iudicantibus de quacumque querela, a quibuscumque in causam provocabuntur; nec alicui nostrorum licebit pesturbare aut inquietare ipsos iudicantes aut iudicia eorum; nec alibi per totam nostram terram, nisi in curia sancti Marci sua respondere cogentur." in *TTh*, vol. I, p. 134, lines 12-18, no LV. This is also confirmed by a later charter by Bohemund III, prince of Antiocheia in 1167, see *TTh*, vol. I, p. 149, lines 3-10, no LXI.
[1079] Jacoby, *Conrad*, p. 213.
[1080] Jacoby, *Conrad*, p. 213.
[1081] Nader, *Burgess Law*, p. 171.

existed, the Venetian statutes were applied; if, however, there was no applicable written Venetian law, customs were then applied and as last resort the judge could judge according to his own best will.[1082]

In the chrysobull of Alexios III Angelos in 1198 by which jurisdiction is allowed to Venetian judges in Constantinople for mixed cases, it is strange that nothing is mentioned about the applicable law.[1083] Perhaps this can be explained by the fact that the jurisdiction of the Venetian judge was not granted by an initiative of the emperor in this chrysobull. As I have already mentioned in the examination of that act, the jurisdiction of the Venetian judge was ratified as a practice, "an unwritten rule" pertaining to the jurisdiction of the Venetian judge that had already existed until that time. Perhaps it was not therefore necessary to refer to the applicable law, but only to regulate this already existing practice by an imperial order that would make clear in which instances the Venetian legate could judge mixed cases. Yet this order of the emperor definitely raises questions about the actual proceedings of the trial. For example, in which language would the trial be conducted in mixed cases? Was the Venetian legate obliged to speak Greek? Perhaps there were interpreters so that all sides could understand the procedure of the trial. Perhaps the Venetian legate was in a position to speak Greek as well. In any case, the chrysobull can not include all the details of the trial. What seems logical is that the chrysobull sets out the main rules, namely that the Venetian legate is allowed jurisdiction for mixed cases under certain conditions, but the exact rules about the trial before a Venetian judge (and thus matters of applicable law and the use of interpreters for example) must have been a matter regulated by acts of competent Byzantine officials, for example the *logothetes tou dromou* who was in general, the main competent judge for the Venetians.

Finally, the provision included in the chrysobull of Manuel I Komnenos to Genoa in 1169 about imprisoment and the role of the guarantor, also strongly reminds us of a provision included in a privilege charter by Conrad of Montferrat in 1190 to Genoa, as I have already explained in the chapter of the acts directed to Genoa.[1084]

[1082] Rösch, *Venedig und das Reich*, p. 56.
[1083] Reg. 1647.
[1084] See the examination of Reg. 1488 (year 1169) in chapter IV,1.

4. Maritime law, shipwreck and salvage issues

4.1 Introduction

In only three chrysobulls are shipwreck and salvage issues regulated: in the chrysobull of 1111[1085] by Alexios I Komnenos to Pisa and in two chrysobulls by Manuel I Komnenos to Genoa in 1169[1086] and 1170 respectively.[1087] It is rather striking that no such provisions have been included in Byzantine imperial acts in favour of the city of Venice and I cannot find a satisfactory answer to this. Laiou suggests that the chrysobulls for Venice do not include any salvage or shipwreck provisions "presumably because the Venetians, treated as Byzantine subjects, were covered by Byzantine law."[1088] However, I do not think that this is the case for the following two reasons.

First of all, we have seen that the emperors regulate legal aspects referring to the Venetians in the examined privilege acts; for example, matters relating to succession law when a Venetian dies within the empire, or about the matter of competent judges for the Venetians, etc.[1089] If Venetians were indeed considered Byzantine subjects, why would the emperor regulate in these chrysobulls issues about the estate of a deceased Venetian within the empire in the first place? In other words, if it was self-evident that the Venetians were covered by Byzantine law, why did the emperors include any legal provisions at all referring to Venetians and try to regulate these cases within these privilege acts? Secondly, we have seen that the Genoese and the Pisans were also subject in some respects to Byzantine law according to the examined acts.[1090] In a chrysobull in favour of Genoa we have read that the Genoese were to be judged by imperial courts and that this provision was applied to all Latins.[1091] Therefore, at least for the 11th century, we know for certain that all Latins were tried in the same imperial courts according to Byzantine law.

Laiou adds that Pisa was a city with which Byzantium had "hostilities at sea" in the past, and this could explain why shipwreck and salvage provisions were included in the Byzantine imperial acts directed to Pisa.[1092] I find this argument more convincing. In respect of Genoa, we know that Genoese pirates were rather active within the Byzantine Empire.[1093] Perhaps because of these "hostilities", shipwreck and salvage provisions were included only in the acts directed at Genoa and Pisa but not in those directed at Venice. Another

[1085] Reg. 1255.
[1086] Reg. 1488.
[1087] Reg. 1498.
[1088] See Laiou, *Byzantine Trade*, p. 181.
[1089] See the examination of the acts directed at Venice, especially Reg. 1647.
[1090] See Reg. 1255, Reg. 1488 and Reg. 1499[1400].
[1091] Reg. 1488.
[1092] Laiou, *Byzantine Trade*, p. 181.
[1093] See for example Reg. 1612 and Reg. 1616.

explanation as to why maritime law provisions were included for the first time for the Italians in the Byzantine imperial acts directed at Pisa, is perhaps connected to the fact that Pisa had already shown particular interest in the field of maritime law. Before 1160, the Pisans had already proceeded in a codification of norms regarding trade and navigation; this formed the so-called *constitutus usus* made by experts in law (*iurisperiti*).[1094] This law book, together with the *constitutus legis* (another contemporary collection of norms of Roman and Lombard law) are considered sophisticated legislative texts.[1095] It is, therefore, logical that Pisans were interested early on in regulating their maritime law issues with the Byzantine Empire. Perhaps it was on their initiative that these provisions of maritime law were included.

[1094] Salvatori, *Pisa*, p. 20.
[1095] Salvatori, *Pisa*, p. 20. On the legal tradition in Pisa until 1204, see chapter I,2.

4.2 Shipwreck and salvage law according to Byzantine law

It is useful, first of all, to examine how shipwreck and salvage were regulated according to Byzantine law. In Justinian's *Digest* it is made clear that goods thrown overboard in order to save the ship are not considered abandoned and could not become the property of the person who collects them.[1096] Moreover, goods being cast ashore from a shipwreck still belong to their owner.[1097] According to the *Codex*, things from a wreck were not claimed by the fisc because it was understood that they still belonged to their owners; here the emperor states that the fisc has no right at all to exploit this situation and profit from it by gaining the shipwrecked goods.[1098] Someone who stole goods from a shipwreck was liable to restore fourfold the value of the stolen goods within a year and after that, restore their value.[1099] It is also ordered that if someone maliciously conceals a wreck that has occurred and as a result help can not be sent to those who are in danger, he is to be punished under the *lex Cornelia*; moreover people who steal from those who have suffered a shipwreck will also have to pay a fine to the state.[1100] Furthermore, in the *Digest*, it is mentioned

[1096] D. 14,2,2,8: "Res autem iacta domini manetnec fit adprehendentis, quia pro derelicto non habetur" (Translation: Jettisoned goods remain the property of their owner; they are not treated as having been abandoned and so do not become the property of whoever picks them up.); text and translation in *The Digest of Justinian*, vol. 1, p. 240-241. See also D. 41,1,9,8.

[1097] D. 41,1,58: *Quaecumque res ex mari extracta est, non ante eius incipit esse qui extraxit, quam dominus eam pro derelicto habere coepit* (Translation: Nothing salvaged from the sea becomes the property of the salvor until its owner has begun to treat it as abandoned.); text and translation in *The Digest of Justinian*, vol. 4, pp. 500-501.

[1098] C. 11,6,1: Si quando naufragio navis expulsa fuerit ad litus vel si quando reliquam terram attigerit, ad dominos pertineat: fiscus meus sese non interponat. quod enim ius habet fisc in aliena calamitate, ut de re tam luctuosa compendium sectetur? (Translation by Blume and Kearly in *AJC*: "If a result of a shipwreck a ship is at any time thrown on to the shore, or touches land anywhere, it shall remain the property of the owner, and the fisc shall not interfere with it. For what right has the fisc to interfere in another's calamity, so as to gain an advantage from so sad an occasion?")

[1099] D. 47,9,1pr.: Praetor ait: In eum, qui ex incendio ruina naufragio rate naue expugnata quid rapuisse recepisse dolo malo damniue quid in his rebus dedisse dicetur: in quadruplum in anno, quo primum de ea re experiundi potestas fuerit, post annum in simplum iudicium dabo. (Translation: "The praetor says: 'If a man be said to have looted or wrongfully received anything from a fire, a building that has collapsed, a wreck, or a stormed raft or ship or to have inflicted any loss on such things, I will give against him an action for fourfold in the year when proceedings could first be taken on the matter and, after the year, for the value.'"); text and translation in *The Digest of Justinian*, vol. 4, p. 500-501. For more references in the *Digest* and the *Code* on this matter see Ashburner, p. cclxxxviii.

[1100] D. 47,9,3,8: "…item alio senatus consulto cavetur eos, quorum fraude aut consilio naufragi suppressi per vim fuissent, ne navi vel ibi periclitantibus opitulentur, legis Corneliae, quae de sicariis lata est, poenis adficiendos: eos autem, qui quid ex miserrima naufragorum fortuna rapuissent lucrative fuissent dolo malo, in quantum edicto praetoris

that the penalty of the *lex Cornelia* is death, provided the accused does not belong to the high class.[1101] In the *Procheiros Nomos* (9th century) it was ordered that against a person who steals things from a shipwreck, a suit within a year can be raised for fourfold the value of the things, and after one year for double the value of the things.[1102] The same provision is included in the *Eisagoge* with the difference that after the first year, the suit is not for double the value, but is "εἰς τὸ ἁπλοῦν."[1103] Shipwreck and salvage provisions are also included in the *Basilica* that repeat more or less Justinianic law.[1104] There is also a novel by Leo VI the Wise that deals with shipwreck provisions.[1105] In that novel, the emperor admits that he is surprised that the death penalty is provided for people who steal and hide things from a shipwreck and adds that this punishment is extremely heavy. The reference to a death penalty by Leo VI has caused some questions given that in the *Procheiros Nomos* and the *Eisagoge*

actio daretur, tantum et fisco dare debere." (Translation: "…Again, by another *senatus consultum*, it is provided that those, by whose malice or design, knowledge of a wreck is forcibly suppressed so that no relief may reach the ship or those in peril thereon, shall be subject to the penalties ordained in the lex Cornelia de sicariis; but those who seize anything through the miserable plight of the shipwrecked and are designedly enriched will have to give also to the imperial treasury as much as the amount for which an action under the praetor's edict will be given against them"; text and translation in *The Digest of Justinian*, vol. 4, p. 769)

[1101] D. 48,8,3,5: "Legis Corneliae de sicariis et veneficis poena insulae deportatio est et omnium bonorum ademptio. sed solent hodie capite puniri, nisi honestiore loco positi fuerint, ut poenam legis sustineant: humiliores enim solent vel bestiis subici, altiores vero deportantur in insulam." (Translation: "The penalty of the lex Cornelia on murderers and poisoners is deportation to an island and the forfeiture of all property. However, nowadays capital punishment is customary, except for persons of a status too high to be subject to the [modern] statutory punishment; those of lower rank are usually either crucified or thrown to the beasts while their betters are deported to an island"; text and translation in *The Digest of Justinian*, vol. 4, p. 769).

[1102] *Procheiros Nomos*, title 39, *Περὶ ποινῶν* in Zepos, *JGR*, vol. II, p. 218: "Κατὰ τοῦ ἁρπάσαντος πρᾶγμα ἀπὸ ἐμπρησμοῦ ἢ καταπτώσεως ἢ ναυαγίου, ἢ κατὰ τοῦ ὑποδεχομένου κατὰ δόλον τὰ τοιαῦτα πράγματα, ἐντὸς μὲν ἐνιαυτοῦ εἰς τὸ τετραπλάσιον δίδοται ἡ ἀγωγή, μετὰ δὲ τὸν ἐνιαυτὸν εἰς τὸ διπλάσιον."

[1103] *Eis.* 40.28 in Zepos, *JGR*, vol. II, p. 361. Laiou has not taken into consideration that there is a difference between the *Procheiros Nomos* and the *Eisagoge* and therefore her conclusion that "Byzantine law became stricter than Roman law" can not stand. See Laiou, *Byzantine Trade*, p. 180, especially footnote 127. Troianos mentions this difference in Troianos, *Nauagia*, p. 521, footnote 16.

[1104] B. 53,3,23 = D. 41,2,21 §§1. 2 jo. D. 16,3,18 (BT 2451/4-6): "Τὸ ἀπὸ ναυαγίου ἢ ἀποβολῆς διὰ χρονίας χρήσεως οὐ δεσπόζεται· οὐδὲ γὰρ ἐστιν ἀδέσποτον…" and B. 53,3,25 = D. 47,9,1pr. §§ 1.5. 2. 3 pr .§ 8 (BT 2451/9-12): "ὁ ἀπὸ ναυαγίου ἢ πλοίου πορθηθέντος ἁρπάζων ἢ κατὰ δόλον ὑποδεχόμενος ἢ ζημιῶν εἵσω μὲν ἐνιαυτοῦ εἰς τὸ τετραπλοῦν, μετὰ δὲ τὸν ἐνιαυτὸν εἰς τὸ ἁπλοῦν ἐνέχεται.".

[1105] Nov. 64. See Troianos, *Neares*, p. 211. On this novel, see the article of Troianos, *Neares*, pp. 515-526.

no death penalty is mentioned.[1106] Leo VI believes that the crime of stealing things from a shipwreck is indeed a terrible one, but the loss of a life, as a penalty for this crime is unfair; therefore, he orders that henceforth the wrongdoer will have to pay a fine of fourtimes the value of the stolen things. The difference with the provisions of the *Procheiros Nomos* and the *Eisagoge* is that Leo VI does not diminish the penalty after the lapse of one year. Andronikos I Komnenos in the 1180's ordered the highest penalty for people who pillaged wrecked ships. He ordered that a person who pillages a wrecked ship will be hung from the mast of that ship. In other words, Andronikos returns to the *lex Cornelia*, but does not make a distinction as to whether the person belongs to the high or low class.[1107] This severe measure imposed by Andronikos proves that the problem of pillaging wrecked ships continued to exist, which is why the emperor tried to tackle the problem by imposing a very severe penalty.[1108]

The *Rhodian Sea-Law* (*Νόμος ναυτικός*) is a collection of maritime law provisions which was probably compiled in the 7th or 8th century and part of it was also included in Justinian's *Digest*.[1109] The *Rhodian Sea-Law* has also been inserted in book 53 of the *Basilica*.[1110] We read in this sea-law that:

...ἐὰν ἐν πελάγει πλοῖον στραφῇ ἢ διαφθαρῇ, ὁ ἀποσώζων τι ἐξ αὐτοῦ ἐπὶ τὴν γῆν λαμβανέτω ἀντὶ μισθοῦ οὗ ἀποσώζει τὸ πέμπτον μέρος.[1111]	...if in the open sea a ship is overset or destroyed, let him who brings anything from it safe on to land receive instead of a fee, the fifth part of that which he saves.[1112]

In medieval maritime statutes we come across special rewards provided for sailors who help in saving goods from the shipwreck. For example, according to the statute of St. Zeno, in Venice such sailors received 3 per cent of the value of the goods that they saved and in Pisa, according to the *Constitutum Usus*, they received 5 per cent.[1113] Given that the above passage of the *Rhodian Sea-Law* does not specify whether or not the salvor ("ὁ ἀποσώζων") is one of the sailors, we can conclude that the term salvor could

[1106] See the discussion in Troianos, *Nauagia*, pp. 488-495; this article is also published in Troianos, *Neares*, pp. 515-526.
[1107] Reg. 1566; this act is not a novel , but an *entole*, an order.
[1108] See Laiou, *Byzantine trade*, pp. 183-84.
[1109] See *ODB*, vol. 3, p. 1792. On this law, see Ashburner, *Rhodian Sea-Law*; Letsios, *Das Seegesetz*, and more recently Rodolakis, *Apo to nomo Rhodion*.
[1110] On the relation between the *Basilica* and the *Rhodian Sea-Law*, see Rodolakis, *Apo to nomon Rhodion*.
[1111] Paragraph 45 of the *Rhodian Sea-Law* = *Basilica*: 53,45, Ashburner, *Rhodian Sea-Law*, p. 37. In paragraph 47 further rewards are provided for the salvor based on the depth to which the object has fallen.
[1112] I use the translation provided in the edition of Ashburner, *Rhodian Sea-Law*.
[1113] *Ashburner* refers to these provisions in Ashburner, *Rhodian Sea-Law*, p. cclxxxix.

include anyone who helped.[1114] The fact that Byzantine legislation is strict with those who steal from a shipwreck and that there are many provisions regulating such matters proves that the looting and pillaging of shipwrecks was something that occured often in Byzantium and thus the emperors tried to take appropriate measures to confront this problem.

[1114] See on this Ashburner, *Rhodian Sea-Law*, p. ccxc.

4.3 The examined provisions

The first preserved provision dealing with maritime law and salvage issues in the examined Byzantine imperial acts towards Venice, Pisa and Genoa is found in the chrysobull by Alexios I Komnenos in 1111 to Pisa.[1115] There, it is mentioned that if a Pisan ship is attacked within the empire and the Pisans lose their belongings because they are removed by Byzantine subjects, the emperor will repair the damage within a specified period of time after proof has been given. I have already expressed my thoughts on what is meant by the expression that the emperor "will do justice" (ποιῇ δίκαιον καὶ διόρθωσιν).[1116] Shipwreck provisions are also included in this chrysobull. It is ordered that if a Pisan ship is wrecked within the empire, the Pisans can keep unconditionally the things that they themselves remove and save. If, however, Byzantines help them in rescuing their things, the Pisans can also keep these things under the condition that they will pay the Byzantines who helped them a reward according to the local custom, unless there is another agreement between the Pisans and the Byzantines (who helped them).[1117] This information proves that local custom played an important role in Byzantine law dealing with issues of shipwreck and salvage. Furthermore, in this chrysobull no particular sanction is mentioned for those persons who steal goods from a wreck of a Pisan ship. Bearing in mind the information about shipwreck and salvage provisions in Byzantine law, it is clear that in the case of shipwreck, the fact that the emperor allows the Pisans to keep their things if they save them themselves, is not striking. Why then does the emperor include such a provision for the Pisans, given that it was normal according to Roman and Byzantine law that the owner remained the owner of the goods after a shipwreck?

First of all, we have to take into account that we are dealing with foreigners within the empire and thus, if no agreements have been made between the two sides, namely the Byzantine and the Pisan, it would have been unclear which law would have been applied in handling the different legal issues that arose between them. Laiou argues that this provision implies that before it was issued, the Pisans could not keep their things if their ship was shipwrecked and she supports the opinion that the goods from the wreckage of a foreign ship belonged to the Byzantine fisc.[1118] I am not, however, convinced of this argument. No such provision has been included in any Byzantine law.[1119] It is interesting to note at this point that according to maritime statutes of the Middle Ages, lost goods from a wreck were also not claimed by the fisc but

[1115] Reg. 1255 in chapter III,1.2.1.2
[1116] See Reg. 1255 in chapter III,1.2.1.2.
[1117] Müller, *Documenti*, p. 44, lines 37-43, no XXXIV.
[1118] Laiou, *Byzantine Trade*, p. 181.
[1119] The custom to which Laiou refers in her article, *Byzantine Trade*, pp.180-81 refers to the penalties given in case someone steals a lost good from a shipwreck.

remained the property of the owners while rewards were given to the finders.[1120] Even in cases in which the owner was not found, a finder of a wrecked thing could become owner only after he had followed a special court proceeding.[1121] According to Byzantine legislation, as we saw earlier, the owner of the goods from a wrecked ship remained their owner. The question is, of course, whether this was to be applied to foreigners. The Byzantine legislator had not taken into consideration what was to happen to foreigners. However, what the law implies is a different matter from what actually occurred in practice. Especially in Byzantine legal practice, questions dealing with the application of law are difficult to answer given the lack of Byzantine case reports. Few Byzantine sources provide light on this issue, however the two most promising are the *Peira* and the *Ecloga Basilicorum*. In other words, despite the fact that Byzantine laws protected the interests of the owner of lost goods involved in a shipwreck, in reality what occurred when a foreign ship was wrecked is another matter. Given that the Pisans were foreigners and that until then, no agreement had been made between Byzantium and Pisa in matters of shipwrecks, it is possible that if a Pisan ship were to be shipwrecked, the Byzantines could have been 'more eager' in looting the goods. Judging by the legal measures taken by different Byzantine emperors against pillaging, as mentioned above, it is certainly possible that this was a common practice. The situation must have changed when these Italians requested yet more privileges from the Byzantine emperors. The Italians, in this case the Pisans, needed a guarantee by the emperor that their things, if involved in a shipwreck, would be kept safe. What better way to confirm such a guarantee than placing it down in a prestigious imperial chrysobull? Presumably, the rationale of the provision in our document is to prevent the looting of Pisan ships by the Byzantines.

We can also conclude from this chrysobull of Alexios I Komnenos to Pisa in 1111, that it was customary to pay a reward to those who helped save the goods from a shipwreck and that this reward was not fixed but varied from place to place. There are also Byzantine laws that refer to issues of salvage of goods involved in a shipwreck. The *Rhodian Sea-Law*, which is also included in the *Basilica*, deals with this issue and provides different rewards based on different criteria (for example, depending on the depth at which the object lies etc).[1122] What is interesting in this act from a legal point of view is that the emperor prefers to refer to local custom here in matters dealing with the salvage of goods in a shipwreck to regulating, for example, a fixed amount within the whole empire for the salvor of the goods of a shipwreck. This is a clear example of how important local customs were in some fields of Byzantine

[1120] See Ashburner, *Rhodian Sea-Law*, pp. cclxxxix ff.
[1121] Ashburner, *Rhodian Sea-Law*, p. ccxci.
[1122] BT: 53, Appendix (Restituta), Legis Rhodiae pars secunda, par. 47. See the observation of Ashburner, *Rhodian Sea-Law*, p. cclxxxviii ff. About the *Rhodian Sea-Law* and its connection to the Basilica see Rodolakis, *Apo to nomo Rhodion*.

law. Even if there had been a law regulating the reward of the salvor, it is the local custom that prevails here by order of the emperor.

Moreover, it seems that custom generally played an important role in Byzantine law according to different Byzantine legal sources which followed in this respect the Justinianic rule. In the *Eisagoge* we read that for the interpretation of laws one also has to take into account the custom.[1123] If, according to the *Eisagoge*, there are disputes about the custom of a city or a province and the custom has been confirmed in court, then the custom can be applied.[1124] The same is included in the *Basilica* in which Justinianic law is repeated.[1125] Information on the application of a custom in the 12th century is offered in the *Ecloga Basilicorum*. The commentator in the *Ecloga Basilicorum* adds that a long-standing custom applies if there is no law that contradicts it and if it has been brought to a court and the judge has decided that this custom is rightly held.[1126] All these references are from texts of a legislative character (including a comment made by the writer of the *Ecloga Basilicorum*) and refer to the importance of custom generally in confirming that Justinianic law was still in force. The Byzantine judge, Eustathios Rhomaios, also takes into consideration long-standing custom in his decisions. According to the *Peira*, Eustathios Rhomaios rejects an opinion because it is neither stated in the written laws nor was it a practice formed by a long-standing custom.[1127] The example mentioned in this chrysobull is a more concrete example of how a custom was applied in practice. In other words, the emperor gives an advantage to local custom in referring to the salvage of goods involved in shipwrecks; thus in this instance, custom prevails over general law by order of the emperor. Moreover, local practice and customs played an important role in medieval Mediterranean maritime law;[1128] this preference of the Byzantine emperor for a local custom confirms that this was also the case in the Byzantine world. In other words, the Byzantines and the rest of the Mediterrean world have something in common here with regard to maritime law: emphasis is put on local custom in this field of law.

[1123] *Eis.*, 2,7 in Zepos, *JGR*, vol. II, p. 241: "Εν τῇ τῶν νόμων ἑρμηνείᾳ δεῖ καὶ τῇ συνηθείᾳ προσέχειν τῆς πόλεως".

[1124] *Eis.*, 2,12 in Zepos, *JGR*, vol. II, p. 241: "Τότε κεχρήμεθα τῇ συνηθείᾳ τινὸς πόλεως ἢ ἐπαρχίας, ὅτε ἀμφισβητηθεῖσα ἐν δικαστηρίῳ βεβαιωθῇ".

[1125] B. 2,1,43 = D. 1,3,34 (BT 19/21-22); B. 2,1,44 = D. 1,3,35 (BT 20/1-3); B. 2,1,46 = D. 1,3,37 (BT 20/6-7).

[1126] *Ecloga Basilicorum*, p. 13, lines 18-20 (comment on B. 2,1,44-45 = D. 1,3,35-36): "Ἔμαθες ἐν τῷ μα' κεφαλαίῳ τοῦ α' τ΄τίτλου καὶ τοῖς λοιποῖς, ὅτι ἡ μακρὰ συνήθεια τότε κρατεῖ, ὅτε οὐ κεῖται νόμος προφανῶς ταύτῃ ἐναντιούμενο, καὶ ὅτε αὕτη ἐν δικαστηρίῳ ζητηθῇ καὶ δοκιμασθῇ καὶ δόξει καλῶς κρατεῖν".

[1127] *Peira*: 44,10 in Zepos, *JGR*, vol. IV, p. 225: ""Οτι ὑπεξουσίου τελευτήσαντος παιδὸς, καὶ τινων λεγόντων, ὅτι τὸ τρίτον εἰς ψυχικὴν διανομὴν ὀφείλει προχωρῆσαι, ὁ δικαστὴς οὐκ ἐδέξατο τοῦτο, διὰ τὸ μὴ ῥητῶς ἐν τῷ ἐδάφει τῶν νόμων κεῖσθαι, μηδὲ ἀπὸ μακρᾶς συνηθείας τοῦτο πραχθῆναι ποτέ·".

[1128] See Constable, *Jettison*, especially p. 217.

Finally, shipwreck provisions are also included in the chrysobull by Manuel I Komnenos to Genoa in 1169[1129] and repeated in a following chrysobull by the same emperor in 1170.[1130] In these two chrysobulls, it is provided that if a Genoese ship is wrecked within the empire and goods are removed by someone, a suit is brought by order of the emperor against this person, who has to recover the lost goods.[1131] The position of the Genoese here is privileged, since the emperor reassures them that if a ship of theirs is wrecked within the empire, it will be considered a very important issue, so that the claim for the restitution of the goods will be backed up by an imperial order (in Greek: "ἐκδίκησις καὶ ἐπανάσωσις τῶν τοιούτων πραγμάτων" and in Latin: "vindicta …..et restauratio huiusmodi rerum").[1132] I do not believe that the word "ἐκδίκησις" (*vindicta* in Latin), as it is used here, means a punishment;[1133] it is, after all, connected to the word meaning "things" (πράγματα) and not to a person. The word "ἐκδίκησις" (and *vindicta* in Latin) is used here rather as claiming the things back, in the sense of a *reivindicatio*, a meaning that we come across in other Byzantine legal texts.[1134]

[1129] Reg. 1488.
[1130] Reg. 1498.
[1131] See the examination of Reg. 1488 and Reg. 1498 in chapter IV,1.2 and 3.2 respectively.
[1132] The whole passage in Greek in *MM*, vol. 3, p. 36, lines 2-6, no V and in Latin in *Nuova Seria*, p. 432, lines 32-36, no IX. See the examination of Reg. 1498 in chapter IV, 3.2.2.
[1133] In this respect, I do not agree with Laiou, see Laiou, *Byzantine Trade*, p. 182: "…the word *vindicta* in the text suggests punishment".
[1134] See, for example, B. 24,2,9 = D. 12,5,9 (BT 1153/14); B. 25,2,17 = D. 20,1,17 (BT 1202/22); B. 25,2,55 = C. 8,13,18 (BT 1207/2); B. 60,5,44 = C. 3.41.1 (BT 2786/15); BS 909/7 (sch. II 1 ad B. 15. 4,1 = D. 10,4,1); BS 3567/21 (sch. Pe 38 ad B. 60, 21,17 = D. 47,10,17); *Ecloga Basilicorum*, p. 132, lines 6-7 (comment on B. 2,3,111,1 = D. 50,17,111,1).

4.4 Comparison to the Russo-Byzantine treaties

Pisans and Genoese were not the first to settle issues of maritime law with the Byzantine emperors. In the 10th century we already find maritime law and shipwreck provisions in the treaties between Byzantium and the Rus.[1135] In the Russo-Byzantine treaty of 911[1136], for example, we read of the help that the latter have to provide to a Byzantine ship in case of bad weather, a provision that we have not come across in our acts.[1137] It is mentioned that if a Byzantine ship has been cast ashore on a foreign coast where the Rus are present, the latter must offer help and take care of the ship and its cargo as well as convey it to a Christian land. If a Byzantine ship has not reached its destination because of a storm or some other obstacle and is close to Byzantine territory, the Rus will help the crew of the ship and safely carry its cargo. If, however, this happens in the land of the Rus, the latter will sell the cargo of the ship and they will refund the Byzantine emperor at a later stage by paying him the proceeds of this sale upon travelling to Byzantium for business, or upon sending a diplomatic mission to the emperor. Moreover, if a Byzantine is murdered or wounded on this ship or if part of the cargo is stolen, the wrongdoers will be punished with the penalties which corresponded to the crimes of theft and murder.[1138]

The provisions on maritime law that we have seen in our acts deal with shipwrecks and salvage matters, whereas the provisions of the Russo-Byzantine treaties deal mainly with the help that the Rus should offer to Byzantine ships in danger. When it comes to maritime law, the main difference between the Russo-Byzantine treaties in the 10th century and the acts that we have examined, is that the former focus on the Byzantine interests, whereas the later aim to secure the interests of the Italians. In other words, the provisions of maritime law in the Russo-Byzantine treaties are intended to secure Byzantine interests and this is proved by the fact that when a Byzantine ship is in danger, the duties of the Rus are described in detail. In the example I have mentioned some lines above, there are three conditions which determine when and how the Rus will help a Byzantine ship that is in danger: i) when it is cast ashore a foreign land, ii) when it is close to Byzantine territory and iii) when it travels within Byzantium. In all three cases it is mentioned in a clear way how the Rus will help and severe penalties are included. In the acts for the Italians, as I have

[1135] On this, see Sorlin, *Les traités*, pp. 313-360; Malingoudi, *Der rechtshistorische*, pp. 52-64.
[1136] Reg. 556.
[1137] Malingoudi, *Der rechtshistorische*, p. 62.
[1138] For these provisions, see Malingoudi, *Der rechtshistorische*, p. 62. See also Sorlin, *Les traités*, p. 334. Sorlin suggests that the act also includes a phrase in which it is mentioned that if a Russian ship is close to Byzantine territory because of bad weather, the Byzantines will accompany it to a Russian land.

already mentioned, there are no provisions about help in case a ship is in danger, but they deal with shipwreck and salvage provisions. These provisions refer mainly to the help that the emperor will offer in case a Pisan or a Genoese ship is wrecked within the empire and goods are stolen. In these acts, no specific penalties are included for the people who steal goods from these shipwrecks and this is a striking difference from the severe penalties that are included for the Rus (including the death penalty)[1139] if they steal something from a Byzantine ship that is in danger or murder a member of the Byzantine crew. The emperor, however, in the examined acts aknowledges that thefts by his subjects from Pisan and Genoese shipwrecks is an important issue and reassures them that he will take care of the matter.

[1139] See Malingoudi, *Der rechtshistorische*, pp. 62ff.

4.5 Comparison to acts of the Crusader states

Issues of maritime law were also regulated in the privilege charters of the 11th and 12th centuries by the Crusader kings for all three Italian cities, Venice, Pisa and Genoa. In particular, it was regulated in many such charters that if the Italians suffer a shipwreck within the kingdom of the corresponding king of the Crusader states, the goods of the ship would remain in possession of the Italians. We quote an example from the *Pactum Warmundi*, the agreement between the patriarch of Jerusalem and the Venetians in 1123:

Si vero aliquis Veneticorum naufragium passus fuerit, nullum de suis rebus patiatur dampnum. Si naufragio mortuus fuerit, suis heredibus aut aliis Veneticis res sue remanentes reddantur.[1140]	If however, a Venetian suffers a shipwreck he will not suffer damage to his property. If he is killed in a shipwreck, his remaining things will be given back to his heirs or to other Venetians.

In this provision, we observe that what will happen to the property of the Venetian who dies in a shipwreck, is also regulated. This is a provision that we have not encountered in our acts. Sometimes it is mentioned that the goods will not be lost but will be saved and returned to the Italians, yet no reference is made to rewarding those who help. Here is an example from the privilege charter by Raymond, prince of Antioch to the Venetians in 1140:

...et si naufragium in terra mea seu in terra baronum meorum passi fuerint, de rebus suis nichil perdant, salve, quanto melius possint, et navem et omnia sua recoligant.[1141]	...if (the Venetians) suffer a shipwreck in my land or in a land of one of my barons they will lose none of their things provided that they recover the ship and all the goods as best as they can.

Similar to the examined Byzantine acts and contrary to the treaties with Russia, nothing is mentioned in these privilege charters about co-operation between the two parties in instances where an Italian or a Crusader ship is in danger due to bad weather.

[1140] *TTh*, vol. I, p. 87, lines 24-27, no XL. For similar provisions, see privilege charter by Baldwin, king of Jerusalem to the Venetians in 1125, *TTh*, vol. I, p. 92, no XLI and the privilege charter by Conrad of Moferrat in 1187 to the Pisans in Müller, *Documenti*, p. 27, no XXIII.

[1141] *TTh*, vol. I, p. 102, lines 10- 13, no XLVI. For similar provisions, see the privilege charter by Reynald, prince of Antioch to the Venetians in 1153 in *TTh*, vol. I, p. 134, no LV; the charter of privileges by the same prince and his daughter to the Pisans in 1154 in Müller, *Documenti*, p. 6, no IV; the privilege charter by Bohemund III, prince of Antiocheia to the Venetians in 1167 in *TTh*, vol. I, pp. 148-149, no LXI; the charter of privileges by Bohemund, prince of Antioch in 1170 to the Pisans in Müller, *Documenti*, p. 15-16, no XIII.

5. Oaths

5.1 Introduction

The issue of oaths in the examined documents is a complicated one because we have come across a number of different types of oaths. First of all, there are oaths that are used as a means to conclude a treaty. These are the oaths sworn by the Italian envoys in order to confirm what has been agreed to with the emperor and the oaths by which authorities (sometimes together with the population itself) of an Italian city ratify what has been agreed between their envoys and the Byzantine emperor. There are also oaths of loyalty to the emperor made either by representatives of the Italian cities or by the population of that city in an open assembly. In addition, there are special oaths which certain people have to promise in order to confirm that they will perform their duties correctly; for example, the people who were to construct the ships mentioned in the chrysobull of Isaac II Angelos to Venice in 1187;[1142] or, the oath which the Venetian legates, who will serve as judges, have to promise as soon as they arrive in Constantinople.

Finally, there is an oath connected to the law of procedure, the so-called *calumnia* oath mentioned in only one act, the chrysobull of 1198[1143] to Venice. For the oaths sworn by certain persons as a means of assurance that they will fulfill their duties correctly and for the issue of the *calumnia* oath, I refer to the examination of the corresponding acts.[1144] In the following, I will examine firstly oaths that are used as a means of concluding treaties with reference to the role of the Italian envoys and secondly, the oaths of loyalty to the emperor sworn by the Italians.

Before proceeding to examine these oaths, one preliminary remark seems necessary. Promising an oath in the Middle Ages was a very important matter. Due to the religious content of the oath, the violation of such an oath had serious consequences, for example, ecclesiastical penalties. Deposition and excommunication were considered significant penalties and it is not an exaggeration to say that their application could make the life of a man during the Middle Ages unbearable.[1145] Moreover, one has to bear in mind that in the West at that time, the oath-taking procedure was also part of a whole feudal system tradition on which Western society was based.[1146] Finally, especially for

[1142] Reg. 1578.
[1143] Reg. 1647.
[1144] See Reg. 1578, Reg. 1647.
[1145] The conflict between Pope Gregory VII and emperor Henry IV and the humilation of the latter in Canossa at the end of the 11th century is a well-known example. See, among others, Berman, *Law and Revolution*, pp. 96-97.
[1146] See the comment made by Day in Day, *Genoa's response*, p. 42 where he speaks of "the western medieval *mentalité*, which placed considerable importance on oaths." For the oath

the Italian city-republics, it is important to stress that the oath played an important role not only in the organisation of their own political systems, but also in their way of exercising their politics.[1147]

in a feudal society see also this chapter 5.4. For the concept of feudalism and its development see Ganshof, *Feudalism*.

[1147] See Prutscher, *Der Eid*, who divides his book into two main parts: oath and the city-republic ("Eid und Kommune") and oath as a means of politics in the city-republic ("Der Eid als Instrument Kommunaler Politik").

5.2 Oaths as means of concluding the treaty and the role of the envoys

Making a treaty at that time required significant time and money. Envoys from the Italian city-states were sent to the Byzantine capital in order to negotiate and conclude a treaty with the emperor. But at that time, the journey from Italy to Constantinople lasted many days and the travellers encountered many dangers on their way.[1148] Even if the envoys reached the Byzantine capital and presented themselves before the emperor, two basic questions arose regarding the conclusion of the treaty. First of all, how was the emperor to know for certain that the Italian envoys were entitled to sign a treaty on behalf of their country and, secondly, how was he to be assured that the agreement that he was to reach with the envoys would actually be observed by the Italians? The answer to the first question was given in the letter that the Italian envoys carried with them, proving that they were entitled to negotiate and conclude a treaty on behalf of their country; this letter of delegation is mentioned in many of the examined acts.[1149] In one of the Byzantine imperial acts, we have seen that the emperor refuses to conclude any treaty with the Genoese envoy Tanto because the latter lacks the corresponding letter of delegation.[1150] Hence, the letter of the mandate of the Italian envoy was a *conditio sina qua non* for the negotiations by which a treaty could be concluded with the emperor. The answer to the second question is related to the oaths which the envoys had to take, as I will explain further on.

At this point, it is interesting to add some information about the role of the envoys, their mandate and the conclusion of the treaty.[1151] Treaties in the Middle Ages were concluded in two ways.[1152] The first was the so-called direct conclusion of the treaty by which the leaders of the two sides met in person and agreed upon a treaty.[1153] If the leaders could not meet, the treaty could also be concluded by the exchange of documents or oaths made by envoys who acted only as messengers. According to Heinemeyer, the chrysobull of Alexios I Komnenos in favour of Pisa in 1111[1154] is one such example, and most probably the chrysobull of Isaac II Angelos in favour of Venice in 1187

[1148] Pirates were a serious threat for a journey made by ship. See for example, the letter of Isaac II Angelos (Reg. 1612) which makes reference to Genoese pirates, who attacked a ship carrying gifts from the Sultan of Egypt, stole the goods and slaughtered the people on board.

[1149] See for example, Reg. 1488, Reg. 1609, Reg. 1610 and Reg. 1616.

[1150] See Reg. 1606.

[1151] This issue has been thoroughly examined by Heinemeyer, see Heinemeyer, *Die Verträge*. See also Heinemeyer, *Studien*.

[1152] Heinemeyer, *Die Verträge*, pp. 87ff.

[1153] This is what Heinemeyer describes as "unmittelbare Vertragsschliessung" in Heinemeyer, *Die Verträge*, pp. 87ff.

[1154] Reg. 1255.

another.[1155] The second way to conclude the treaty was by sending envoys, who were empowered with a mandate to negotiate and conclude the treaty, and promise that their city will ratify the agreeements that they have made.[1156] Heinemeyer adds that in the latter case, the treaty concluded between the envoy and the emperor still had to be ratified by the Italian city.[1157] According to the examined material, the agreements that the envoys made with the emperor were also put down in writting and two copies of them were made. In a letter of Isaac II Angelos to Genoa in 1192 the emperor mentions:[1158]

...ἵνα δὲ μὴ καὶ ἀμφιβάλλον ἴσως ἐπὶ τισι τῶν συμφωνηθέντων ὑμῖν γένοιτο, δυσὶν ἰσοτύποις ἐγγράφοις τὰ συμφωνηθέντα παρ' αὐτῶν διαληφθῆναι ἡ βασιλεία μου ᾠκονόμησε καὶ ταῖς ὑπογραφαῖς αὐτῶν καὶ ταῖς συνήθεσι σφραγίσι βεβαιωθῆναι καὶ τὸ μὲν ἓν τούτων τοῖς τοῦ λογοθέτου τοῦ δρόμου χαρτίοις τῆς βασιλείας μου ἐναποτεθῆναι, τὸ δὲ ἕτερον ἀποκομισθῆναι ὑμῖν παρὰ τῶν ἀποκρισαρίων τῆς βασιλείας μου εἰς πληροφορίαν καὶ πίστωσιν τοῦ κατὰ ἀρέσκειαν καὶ συναίνεσιν καὶ θέλησιν τῶν ἀποκρισαρίων ὑμῶν τὰ τούτοις ἐμπεριεχόμενα συμφωνηθῆναι.[1159]

...and so that there is no doubt either for what is agreed with you, my Majesty had the agreement written down in two identical copies and had it confirmed by their signatures and the usual seals and had one of them given to the office of my *logothetes tou dromou*, and the other one given to you by my imperial envoys for information and the confirmation of the fact that the agreement had come about according to the will and full consent of your envoys.

There are thus two acts of the same type made, that are equally valid. ("δυσὶν ἰσοτύποις ἐγγραφοις" in Greek and in Latin "duobus eiusdem formae") and one is kept in the office of the *logothetes tou dromou*,[1160] whereas the other is handed to the Genoese; both acts are sealed and signed. As stated clearly in the above abstract, the reason that two copies of the agreement were

[1155] Reg. 1578. See Heinemeyer, *Die Verträge*, pp. 88ff. For a diplomatic analysis of these two acts see Malingoudi, *Verträge*, pp. 31-33.
[1156] This is what Heinemeyer describes as "zusammengesetzte Vertragsschliessung" in Heinemeyer, *Die Verträge*, pp. 94ff.
[1157] Heinemeyer, *Die Verträge*, pp. 87ff., especially pp. 150ff.
[1158] Reg. 1610 in chapter IV,5.
[1159] *MM*, vol. 3, p. 25, lines 4-13, no IV; and the Latin translation in *Cod. Dipl. Genova*, vol. III, p. 51, lines 19-27, no 20: "Ne autem dubium fortasse super aliquod pactorum vobis exsurgat, duobus eiusdem formae exemplaribus concinnata ab ipsis pacta hinc inde assumi maiestas mea disposuit et subscriptionibus ipsorum et consuetis sigillis firmari et unum quidem horum inter chartas cancellariis cursus maiestatis meae deponi et, alterum vero, remitti vobis per legatos maiestatis meae in testimonium et fidem quod secundum placitum et assensum et voluntatem legatorum vestrorum quae in his continentur concinnata fuerint."
[1160] On the role of the *logothetes tou dromou* in these treaties see the examination of Reg. 781 and Reg. 1647 in chapter II,1.2 and 7.2 respectively.

made was that the parties wanted to avoid controversies on what had or had not been agreed.[1161]

Heinemeyer supports the opinion that the relationship between the city and the envoy reflected in the mandate of the Italian envoy, was modelled on the Roman law *mandatum*.[1162] The *mandatum* of Roman law was a *bonae fidei* contract by which the mandatory agreed to perform a service requested by the mandatory.[1163] The *bona fides* of the envoys was essential for their entire mission. When they received their mandate they had to promise to act for the benefit and the glory of their city.[1164] A characteristic element of the Roman law *mandatum* is its gratuitous character: the mandatory performs the service not in order to make profit but *ex officio atque amicitia*, namely out of duty and friendship.[1165] However, the payment of a *honorarium*, a remuneration became very common. Similar to the *honorarium* was the reward that the envoys could receive.[1166]

As Queller points out, in the Middle Ages one finds a distinction between envoys acting as a *nuntius* or as a *procurator*. A *nuntius* did not have general power to conclude a treaty, but was used only to exchange letters with the other side and therefore his role was mainly one of communication; he was, in other words, "a living letter."[1167] A *procurator*, on the other hand, was entitled to act in full power, in *plena potestas*, and thus reach a treaty with the other party on behalf of their representative.[1168] Taking into account Heinemeyer's observations of how treaties were made during the Middle Ages, the *nuntius* was used when the treaty was concluded directly ("unmittelbare Vertragsschliessung"), whereas the *procurator* was used in the second manner of concluding a treaty, that is when a mandate was given to an envoy to negotiate and conclude a treaty on behalf of the city ("zusammengesetzte Vetragsschliessung").[1169]

In the examined Byzantine imperial acts the following words are used to describe the envoys: "ἀποκρισάριοι"[1170] in Greek and *apocrisarii*,[1171] *nuntii* or *nunci*[1172], *legati*[1173], *missi*[1174] and *transmissi*[1175] in Latin. I have not encountered

[1161] On the issue of the language of these acts and their translation see also chapter I,3.
[1162] Heinemeyer, *Die Verträge*, pp. 101ff. On the Roman law *mandatum* see Watson, *Mandate*.
[1163] Kaser, *Römisches Privatrecht*, pp. 415-419; Zimmermann, *Obligations*, pp. 413-432.
[1164] Heinemeyer, *Die Verträge*, p. 102.
[1165] D. 17,1,14.
[1166] Heinemeyer, *Die Verträge*, p. 102.
[1167] Queller, *Ambassador*, pp. 3-25, especially pp. 7-10 and p. 25.
[1168] Queller, *Ambassador*, pp. 26-59.
[1169] Heinemeyer, *Die Verträge*, pp. 87ff.
[1170] For example, Reg. 1255, Müller, *Documenti*, p. 43, line 12, no XXXIV; Reg. 1498, *MM*, vol. 3, p. 35, line 40, no V; Reg. 1609, *MM*, vol. 3, p. 27, lines 6, 16 and p. 27, line 2, no V.
[1171] For example, Reg. 1304, Pozza and Ravegnani, *I trattati* (version C), p. 53, line 5, no 3.
[1172] For example, Reg. 1304, Pozza and Ravegnani, *I trattati* (version D), p. 53, line 3, p. 55, line 17; no 3; Reg. 1365, Pozza and Ravegnani, *I trattati* (version C), p. 63, line 22; no 4; Reg. 1590, Pozza and Ravegnani, *I trattati*, p. 106, line 8, no 9; Reg. 1255, Müller, *Documenti*, p.

the term *procurator*. In most of the cases, the Italian envoys were empowered with a mandate to negotiate and conclude a treaty with the emperor. A characteristic example is found in the chrysobull of 1170[1176] to Genoa. There it is clear that the Genoese envoy, Amico de Murta, has the power to negotiate and conclude a treaty (in Greek: "τρακταῖσαι καὶ συμφωνῆσαι" and in Latin: *convenire et tractare*) with the Byzantine emperor on behalf of the authorities and the city of Genoa.[1177] As Queller notes, it is obvious that Amico functions as a *procurator* despite the fact that this very word is not included in the acts.[1178] On the contrary, I would add, Amico is mentioned in one version of that chrysobull as a *nuncius*.[1179] Hence in this document what is referred to as *nuncius* functions in a manner similar to what Queller describes as *procurator*.

It is also interesting to add, that according to Heinemeyer there are similarities between the wording and structure of the mandate given to the Genoese envoy Amico de Murta in 1169 and a delegation act of the Western emperor Frederick I Barbarossa in 1183. He suggests that in the second half of the 12th century there was probably a standard type of delegation act circulating within Europe.[1180] This is completely logical given the fact that during the 12th century there had been rich diplomatic activity in Europe consisting of the exchange of acts and the making of treaties. Especially in Italy, with the rise of trade and the model of city-states, diplomatic relations played an important role at that time. Around 1167 most of the Northern Italian city-states united their power and formed the so-called Lombard League in order to resist Frederick I Barbarossa, the Western emperor. In 1183 the Peace of Constance was signed between Frederick I Barbarossa and representatives of the Lombard League.

52, line 4, no XXXIV; Reg. 1488, *Cod. Dipl. Genova*, vol. II, (version Q), p. 105, line 6, no 50.

1173 For example, Reg. 1304, Pozza and Ravegnani, *I trattati* (version D), p. 55, line 20, no 3; Reg. 1647, Pozza and Ravegnani, *I trattati*, p. 121, lines 3, 5, 6, 10, 13, 23; p. 127, line 24, p. 132, line 15, no 11; Reg. 1488, *Cod. Dipl. Genova*, vol. II, (version C), p. 105, line 6 and (version Q), line 18, no 50.

1174 For example, Reg. 1365, Pozza and Ravegnani, *I trattati* (version B), p. 63, line 22, no 4.

1175 Reg. 1488, *Cod. Dipl. Genova*, vol. II, (version C), p. 105, line 19, no 50.

1176 Reg. 1498.

1177 The Greek text in *MM*, vol. 3, p. 35, line 41, no V and the Latin in *Cod. Dipl. Genova*, vol III, p. 60, lines 31-32, no 21. See also the chrysobull of 1169 (Reg. 1488) and the expressions used there when referring to the mandate of Amico: "potestatem tractare et conventare" in *Cod. Dipl. Genova*, vol II, (version Q), p. 105, line 8 and lines 17-28, no 50.

1178 See Queller, *Ambassador*, pp. 28-29.

1179 Cod. Dipl. Genova, vol. II, (version Q) p. 105, line 6, no 50. In the other version (C), at this point Amico is mentioned as "legatus".

1180 Heinemeyer, *Die Verträge*, p. 101: "Die ähnlichen Formulierungen und der gleiche Aufbau lassen die Vermutung zu, dass die Bemerkungen im Chrysobull und in der Conventio von 1169 den wesentlichen Inhalt der Vollmachturkunde wiedergeben, und weiter, dass zumindest schon in der zweiten Hälfte des 12. Jahrhunderts ein verhältnismässig einheitlicher Typus der Vollmachturkunde im zwischenstaatlichen Verkehr Europas bestanden hat."

The negotiations and the treaty itself were based on many missions made by envoys of all these Italian cities who were empowered to negotiate and conclude a treaty on behalf of their cities; all of these representatives must have carried with them a delegation letter which included their mandate. Undoubtedly, through this growth of diplomatic relations, both secular and ecclesiastical authorities in Europe became familiar with delegation letters.

There is also the issue of the ratification of the agreement by the respective cities of the envoys. When the envoy received the mandate to negotiate and conclude a treaty with the emperor, the agreement reached still had to be ratified by his city.[1181] It was common practice at that time for the population of an Italian city-republic to promise an agreement made with another party in a public assembly, and this was a way of ratifying the agreement made.[1182] In most cases presented by the examined material, the envoys promised that their city would ratify the agreement they concluded with the Byzantine emperor. But was the city actually obliged to ratify the agreement made between the envoy and the emperor? It is rather difficult to give a satisfactory answer to this question because first of all, in the examined material we have not come across a case in which the Italian city refuses to ratify an agreement concluded by her envoys with the emperor. There is, however, some information about a Byzantine envoy, Constantine Mesimeres, who had concluded a treaty with Genoa but the emperor had refused to ratify it.[1183] Mesimeres was accused of false representation (παραπρεσβείας ἐκεῖνον γραφῆναι) in the sense of exceeding his mandate;[1184] it seems that he did not act according to the mandate given to him but we do not know the actual reasons behind this accusation.[1185] As I have already mentioned, in our documents we have no information about Italian envoys who exceeded their mandate. The whole issue of the ratification of the treaty was obviously related to the actual mandate received by the Italian envoy from his city. The city would not ratify the treaty if the envoy exceeded his mandate.

At this point, Heinemeyer again makes a comparison to the Roman law of obligations. He argues that the mandate of the Italian envoys actually consisted of two parts: the first part included the negotiation and the conclusion of the treaty as well as the swearing to it by the envoys, whereas the second part was the obligation of the Italian city that gave this mandate, to recognise and observe the agreement that the envoy had reached with the emperor.[1186] In other words, the ratification of the treaty by the mandator-city was essential for the validity of the treaty. That is why the emperor required a strict means of assurance that the agreement he reached with the Italian envoy

[1181] Heinemeyer, *Die Verträge*, pp. 87ff., especially pp. 150ff.
[1182] See Prutscher, *Der Eid*, pp. 107ff.
[1183] On this matter, see Reg. 1609, year 1192.
[1184] *MM*, vol. 3, p. 27, lines 1-7, no V. For this issue, see the examination of Reg. 1609.
[1185] See Heinemeyer, *Die Verträge*, pp. 153ff.
[1186] Heinemeyer, *Die Verträge*, pp. 106ff.

would then be ratified by the Italian city. This means of assurance was an oath which the Italian envoy had to promise in person upon the agreement reached; in this oath the envoys assured the emperor that their city would ratify the agreement.

In many of the examined documents it is mentioned that the agreement between the emperor and the Italian envoys was confirmed by the envoys both in writting and by oath, namely by signatures of the Italian envoys and by oaths that they have taken.[1187] This oath was a way of concluding the treaty but it was not unique to the treaties between the Italian cities and Byzantium; it was, rather, a general way to conclude a treaty in the Middle Ages.[1188] Swearing an oath at that time had serious consequences, and was therefore an important and effective means of carrying out diplomatic missions that involved negotiating and reaching treaties with other parties.[1189] In the Russo-Byzantine treaties in the 10th century, the oath was used as a means of confirming the agreements made.[1190] This oath made by the envoys was therefore used as a guarantee that their city will observe the treaty.

As Heinemeyer has suggested, similarities can be shown at this point with the oath in the Roman law of obligations known as *cautio ratam rem dominum habiturum*.[1191] In particular, in the Roman law of civil procedure, there were two forms of legal representation: the party to a lawsuit could use either a *cognitor* or a *procurator*. The *cognitor* was appointed by one of the parties of the trial in the presence of the other party and therefore in this case, described by Gaius no extra guarantee is provided.[1192] The *procurator* however, "was informally appointed by his mandator, without notification necessarily being given to the adversary."[1193] When one party was represented by a *procurator* and not by a *cognitor*, the other party had the right to demand from the *procurator* an oath of guarantee that his client, the principal, will ratify the acts of the *procurator* (*cautio, satisdatio ratam rem habiturum / cautio rem*

[1187] See, for example, Reg. 1255 (Pisa), Reg. 1590 (Venice), Reg. 1607 (Pisa), Reg. 1609 (Genoa), Reg. 1610 (Genoa) and Reg. 1616 (Genoa).

[1188] See, for example, the use of oath in the treaty of Constance which was concluded in 1183 between the German emperor, Frederick Barbarossa, and the Lombard League, in *Monumenta Germaniae Historia*, pp.68ff., document no 848. See also the observations of Laiou on how the oath was used by the Byzantine emperors in Laiou, *The emperor's word*, pp. 347-362, especially pp. 355ff. See also Laiou, *The Foreigner*, pp. 89-91.

[1189] See Ganshof, *Histoire*, pp. 47ff.

[1190] For example, see Reg. 556. See Sorlin, *Les traités*, p. 333 where the writer translates this act and it is mentioned: "… et de proclamer un tel amour, non seulement par la simple parole mais aussi par un écrit et un ferme serment, en jurant sur son arme, selon notre foi et notre loi." And further on in the same page: "…d'un amour immuable et incorruptible, proclamé par confirmation et par un écrit avec serment, avec vous, Grecs".

[1191] Heinemeyer, *Die Verträge*, pp. 106ff.

[1192] *Gaius* 4,97. On the difference between *cognitor* and *procurator* see also Zwalve, *Hoofdstukken*, p. 380.

[1193] Berger, *Dictionary*, p. 653.

ratam dominum habiturum).[1194] In other words, this oath in Roman law was sworn by the *procurator* in court as a guarantee that his principal would approve of his actions and would not sue the defendant a second time for the same case.[1195]

Regarding the mandate of the Italian envoys, I must add here that some letters of instruction given by the Italian cities to their envoys have been preserved and they describe in detail the mandate of the envoys.[1196] There is also an interesting act preserved by the Genoese envoy, Grimaldo, who promises to fulfill his mission correctly and follow the instructions he receives. In particular he promises to act and negotiate in good faith for the honour and the benefit of Genoa "per bonam fidem tractabo, operabo honorem et utilitatem Ianue urbis") according to the orders of the authorities of Genoa ("sicut consules Communis vel maior pars michi ordinaverint").[1197] Moreover, in this oath Grimaldo forbids his sons from becoming vassals of the emperor ("..nec nullo modo permittam quod aliquis ex filiis meis vassallus imperatoris in toto hoc itinere deveniat").[1198] Obviously, by this last prohibition the Genoese authorities want to ensure that he will act only for the benefit of Genoa in the negotiations with the emperor.

Theoretically, therefore, the Italian city could indeed refuse to ratify the agreement that their envoy had concluded with the emperor, yet this never actually happened. Such an action would have undoubtedly been an extreme measure and would have created an atmosphere of mistrust and uncertainty in the relations between the Italian cities and the Byzantine Empire.[1199] Although in many of our acts it is stated that the treaty concluded by the Italian envoys and the emperor has to be ratified or has been ratifed by the corresponding Italian city, there is only one such act of ratification preserved in the Italian archives. In this document from 1192, which can be found in the archives of Genoa, the consuls ratify the agreement that two Genoese envoys, Guglielmo Tornello and Guido Spinula, had made with the emperor Manuel I

[1194] Kaser, *Zivilprozessrecht*, pp. 213ff., especially p. 215.
[1195] Berger, *Dictionary*, p. 384.
[1196] There are six such letters of instruction preserved, which are as follows: i. to Amico de Murta between Oct. 1169 and April 1170 from Genoa, ii. to Grimaldo in 1174 from Genoa, iii. to Ottobono Dellacroce in 1201 from Genoa, iv. a letter to an envoy whose name is not mentioned according to Heinemeyer, Verträge, p. 109, footnote 146, v. to Uguccione di Lamberto Bono and Pietro Modano in 1197 from Pisa, vi. to Enrico Navigaioso and Andrea Donato, probably in 1197 from Venice. For the editions of these acts, see Heinemeyer, *Die Verträge*, p. 108-109. For ii. and iii. see also *Cod. Dipl. Genova*, vol. II, pp. 206-222, no 96 and vol. III, p. 194-199, no 77. For an analysis of these instructions, see Heinemeyer, *Die Verträge*, p. 108ff.
[1197] *Cod. Dipl. Genova*, vol. II, p. 205, lines 2-5 and lines 6-7, no 95.
[1198] *Cod. Dipl. Genova*, vol. II, p. 205, lines 14-16, no 95.
[1199] Heinemeyer also describes the refusal of ratification of the treaty by the Italian side as "eine schwer wiegende politische Massnahme, die im allgemeinen zur Verschlechterung der zwischenstaatlichen Beziehungen führen musste". See Heinemeyer, *Die Verträge*, p. 157.

Komnenos.[1200] The consuls, moreover, promise in the presence of a Byzantine envoy and an interpreter that the city of Genoa will observe what was agreed between the Byzantines and the Genoese envoy, Amico de Murta.[1201] Among the preserved documents of the city of Genoa is also an act by which the envoy, Amico de Murta, presents to the Genoese assembly the convention that he had concluded with Manuel Komnenos I for ratification.[1202] It is interesting to note that, in the case of Genoa, the oath that her consuls have to promise at their appointment includes a clause that the consuls would have to observe the treaties that have been made or will be made with the Byzantine emperor.[1203] The fact that such a clause was included in the inaugural oath of the consuls, proves how important these treaties were for the Genoese.

It is important to stress at this point that the Byzantine emperor never swore an oath in the examined documents. Let us not forget that although the examined acts were, in reality, treaties between Byzantium and the Italian cities, they appeared in a form of a chrysobull.[1204] Dölger and Karayannopulos have suggested that treaties from 992 until the middle of the 13th century that have the form of a privilege act (*chrysobullos logos* or *chrysobullon sigillion*) are differentiated according to two categories based on where the negotiations took place: in Constantinople, or in the capital city of the other party. In both cases, however, the treaty was signed in the Byzantine capital.[1205] If the negotiations took place in the city of the other party, an extensive oath made by the other side is inserted, which is taken before a Byzantine imperial official. This oath was a general oath of loyalty to the Byzantines but it also included the specific obligations of the other party. Dölger and Karayannopulos refer here to the privilege act of Alexios I Komnenos in 1111 directed at Pisa, which includes an oath of the Pisans before a Byzantine official, Basil Mesimeres in Pisa.[1206] This oath is indeed sworn by the whole population (ἡμεῖς ὁ ἅπας ὁ Πισσαϊκὸς

[1200] See *Cod. Dipl. Genova*, vol. III, pp. 75-78, no 24.

[1201] *Cod. Dipl. Genova*, vol. III, pp. 75-78, no 24; see also Heinemeyer, *Die Verträge*, p. 124.

[1202] See *Cod. Dipl. Genova*, vol. II, pp. 121-123, no 53. The document begins as follows: "Hoc est exemplum conventionis quam Amicus de Murta……quando rediit de legatione constantinoplitana et que fuit firmata in publico parlamento. "

[1203] *Cod. Dipl. Genova*, vol. I, p. 166, lines 6-9, no 128: "Conventiones illas inter imperatorem Constanipolitanum et Ianuenses, quas legati fecerunt aut fecerint, quas consules de Communi, qui modo sunt, scriptas et determinatas nobis dederint adimplebimus, ita determinatim ut eas per scriptum nobis dederint."

[1204] For this, see chapter I, 3.

[1205] Dölger and Karayannopulos, *Urkunden*, pp. 95-96. This is related, I think, to what Heinemeyer has suggested on the way treaties were made in the Middle Ages, namely whether the treaty was concluded directly ("unmittelbare Vertragsschliessung") or by an envoy who was entrusted with a mandate to negotiate and conclude a treaty on behalf of the city ("zusammengesetzte Vetragsschliessung"). See the discussion above.

[1206] See the examination of Reg. 1255.

λαὸς)[1207] and it is not only an oath of loyalty to the emperor and his son, but it also includes specific provisions that the Pisans promise to observe.[1208]

[1207] Similar expressions are also used in the document, see Reg. 1255.
[1208] For example, they also promise that they will help find persons who have caused damage to the empire, etc.; see the examination of Reg. 1255.

5.3 The corporal oath (σωματικός ὅρκος)

In several cases in the examined material, the Italian envoys have promised on behalf of their city that the agreement will be observed and in some acts this kind of oath is referred to as corporal oath (σωματικὸς ὅρκος).[1209] It is worth taking a closer look at this term in order to determine whether it was a special kind of oath or an oath more widely known in Byzantine and Western legal practice. This will be examined in the following sections with reference to the cases in our documents.

In many Byzantine legal texts reference is made to a corporal oath (σωματικός ὅρκος), which is an oath taken in person and upon the Gospels.[1210] In the 10th act of the Sixth Ecoumenical Council (680-681) we read that the church men in question have sworn the corporal oath, which is the oath taken upon the Gospels: "..ἐπιδιδότωσαν καὶ τὸν σωματικὸν ἐπὶ τῶν προκειμένων ἁχράντων τοῦ Θεοῦ Εὐαγγελίων καταβαλλόμενοι ὅρκον".[1211]

In Byzantine law, there seems to be a distinction between a "corporal oath" (σωματικός ὅρκος) on the one hand, and a written oath (ἔγγραφος ὅρκος) on the other.[1212] According to the *Basilica*, the corporal oath consists of promising the oath in person upon the Gospels and then putting it down in a document, in contrast to the simple written oath which is a clause of an oath, inserted in a document.[1213] The promise upon the Gospels is characteristic of the corporal oath. This is what is expressed in the *Basilica* by the "τῇ ἀληθείᾳ ἐπωμόσω" meaning that in a corporal oath, one promises on 'The Truth', that being the Holy Books.[1214] The distinction between corporal and written oaths can also be seen in Balsamon' s comment on the punishment given as a result of the violation of an oath; he explains that the punishment differs according to the kind of oath violated:

Ἄλλως γὰρ ἐπιτιμᾶται ὁ κατ' ὀλιγωρίαν ὀμόσας, καὶ ἐπιορκήσας, ἄλλως ὁ κατὰ βίαν, ἄλλως ὁ ἐκ μεταμέλου, ἄλλως ὁ διὰ	For someone who has promised in contempt and has falsely sworn is punished in one way, in a different way

[1209] Reg. 1607, Reg. 1609, Reg. 1610 and Reg. 1616.

[1210] See, for example: C. 2,27,1; the novel of Alexios Komnenos, Reg. 1082 [1283], Zepos, *JGR*, vol. I, coll. IV, Nov. 19, pp. 292-296; B. 10,25,3 = C. 2,42,3 (BT 593/22-26); *Peira*: 68,6 in Zepos, *JGR*, vol. IV, p. 254; Balsamon in *RhP*, vol. 4, p. 249/18.

[1211] *ACO*, *conc. Const. tertium*, p. 390, line 10, no 10.

[1212] There is also an opinion that the "σωματικός ὅρκος" is contrary to the "ψυχικός ὅρκος" but this suggestion does not seem to be convincing, as we will see from the examined sources in the sections that follow; see Koukoules, *Byzantinos Bios*, p. 352.

[1213] B. 10,25,3 = C. 2,42,3 (BT 593/22-25): "Ταῦτα, ὅπου ἐνεγράφη τῷ συμβολαίῳ μόνον ὁ ὅρκος, οὐ μὴν σωματικῶς, καὶ τῇ ἀληθείᾳ ὤμοσεν ὁ νεώτερος ἑαυτὸν εἶναι μείζονα [...] οὗτος ὁ ὅρκος σωματικῶς ἐδόθη παρὰ σοῦ, τουτέστιν αὐτῇ τῇ ἀληθείᾳ ἐπωμόσω..." See Simon, *Zivilprozess*, p. 343, where he refers to this part of the *Basilica*.

[1214] Simon expresses a different view in Simon, *Zivilprozess*, p. 343.

ἄμυναν, ἄλλως ὁ κατὰ δόλον, ἄλλως ὁ ἀθετήσας ὅρκον γεγονότα διά τι παιγνιῶδες ἢ καὶ ἀπόβλητον, ἄλλως ὁ σωματικὸν ὅρκον παραβάς, ἄλλως ὁ ἔγγραφον…[1215]

someone who has been forced (to swear), in a different way someone who sworn and changed his mind, in a different way someone who did so because he was in defence, in a different way someone (who has promised) with maliciousness, in a different way someone who has renounced an oath made for fun or on a prohibited matter, in a different way someone who has broken a corporal oath, in a different way someone who has broken a written oath...

The corporal oath in the above passage is distinguished from the written oath. What we can conclude with certainty is that different punishments are applied to violations of each of these oaths, as shown in the aforementioned text of Balsamon.[1216] Hence, we can conclude that the two kinds of oaths, the corporal oath and the written oath, carry different values as evidence. It is a pity that Balsamon does not mention what kind of punishment was provided for the violation of each oath in particular, because then we could have clearly determined the value of each oath according to the severity of the punishment.

However, if we take into account what is mentioned in the *Codex*, it seems that the corporal oath was higher in value.[1217] This provision, which has been transmitted in the *Basilica* refers to what happens when a person aged less than 25 years has pretended to be over 25 years.[1218] In the *Basilica*, reference is made to the evidence that can be used regarding the proof of the person's age. It is stated that if you have used an oath in a document certifying that you are older, the possibility of asking for *restitutio in integrum*, namely, restitution to the original position (τὴν τῆς ἀποκαταστάσεως βοήθειαν) is excluded.[1219] If you have sworn a corporal oath, then you are not entitled to use any "legal remedy" whatsoever (μηδεμίαν βοήθειαν) for restitution. The exclusion of the possibility of asking for restitution when a corporal oath has been sworn implies the

[1215] In *RhP*, vol. 4, p. 249, lines 14-19. In describing the oath in the ecclesiastical procedure from 565 until 1204, Troianos mentions that the oral procedure of the oath is usually accompanied by placing the right hand on the *Evangelia* or other relevant gestures of the person and these are characterized in sources as a "σωματικός ὅρκος"; see Troianos, *Ekklisiastiki*, p. 109. However, he points out that this oral procedure does not occur when there is a written oath ("ἔγγραφος ὅρκος") and then he refers to Balsamon in *RhP*, vol. 4, p. 249, lines 18-19 (see the aforementioned text of Balsamon).

[1216] See above.

[1217] C. 2,42,3,3. See Simon, *Zivilprozess*, p. 343.

[1218] B. 10,25,3 = C. 2,42,3 (593/9-10): "'Εὰν εἰς περιγραφήν τινος ὁ ἐλάττων τῶν εἰκοσιπέντε ἐνιαυτῶν ἐσπούδασε μείζονα ἑαυτὸν διὰ τῆς οἰκείας θέας ἀποδεῖξαι...".

[1219] The "ἀποκατάστασις" used here is a technical term and corresponds to the *restitutio in integrum*. See for example, B. 2,2,20 = D. 50,16,22 (BT 24/11-12) and B. 8,2,46 = D. 3,3,46 (BT 424/20).

importance of such an oath; its value is higher than the simple written oath and what is said more or less in this text of the *Basilica* is that once a corporal oath has been made then "there is no turning back".[1220] Such a severe consequence must also have had an impact on the frequency with which such an oath was used, at least in respect of this provision.

In the *Peira*, there is also information indicating that the corporal oath was considered serious evidence; it is stated that a corporal oath puts an end to any controversy: "μετὰ γὰρ τὸν σωματικόν ὅρκον πᾶσα ἀντιλογία σχολάζει".[1221] This sentence is a strong reminder of the description of the oath by Saint Paul in one of his *Epistles*, where he also explains that the value of the oath upon God is very important and it is used to stop any controversy between persons: "ἄνθρωποι μὲν γὰρ κατὰ τοῦ μείζονος ὀμνύουσι, καὶ πάσης αὐτοῖς ἀντιλογίας πέρας εἰς βεβαίωσιν ὁ ὅρκος".[1222]

The term *sacramentum corporale* or related forms such as *corporale iuramentum,* for example, appear in many medieval documents in Europe and both terms mean that the oath is made in person, usually by touching the Gospels.[1223] In medieval documents we come across many examples in which a person promises in person an oath by touching the Gospels and the expression "tactis corporaliter sacrosanctis evangeliis" or similar expressions are used. This kind of oath is used as a means of guaranteeing that what has been agreed to will be observed. This kind of oath is used, for example, in treaties that the Italian cities made with other parties, namely parties other than Byzantium.

[1220] B. 10,25,3 = C. 2,42,3 (BT 593/18-26): "'Εαν, φησίν, ἐν συμβολαίῳ μετὰ ὅρκου μείζονα σεαυτὸν εἶναι διεβεβαιώσω, οὐκ ὀφείλεις ἀγνοεῖν ἀποκεκλεισμένην σοι εἶναι τὴν τῆς ἀποκαταστάσεως βοηθείαν διὰ τὸν ὅρκον, εἰ μὴ φανερῶς καὶ προδήλως δι' ἐγγράφων συμβολαίων παρὰ σοῦ προσφερομένων, οὐ μὴν διὰ μαρτύρων καταθέσεως σεαυτὸν ἐλάττονα εἶναι ἀποδείξεις. Ταῦτα, ὅπου ἐνεγράφη τῷ συμβολαίῳ μόνον ὁ ὅρκος, οὐ μὴν σωματικῶς καὶ τῇ ἀληθείᾳ ὤμοσεν ὁ νεώτερος ἑαυτὸν εἶναι μείζονα. 'Εαν μέντοι, φησίν, οὗτος ὁ ὅρκος ἐδόθη παρὰ σοῦ, τουτέστιν αὐτῇ τῇ ἀληθείᾳ ἐπωμόσω μείζονα σαυτὸν εἶναι, μηδεμίαν σοι περιλελεῖφθαι βοήθειαν προφανεστάτου νομίμου ἐστίν." It is also interesting to see how this provision is preserved in the Hexabiblos: "'Οτι ἐὰν διὰ τῆς οἰκείας θέας ἀφήλιξ ἡπάτησέ τινα, μείζονα ἑαυτὸν διαβεβαιωσάμενος, οὐκ ἀποκαθίσταται. Ὡσαύτως καὶ ἐὰν σωματικῶς αὐτῇ τῇ ἀληθείᾳ ἐπομόσηται μείζονα ἑαυτὸν εἶναι, οὐκ ἀποκαθίσταται. 'Εὰν δὲ ἐν συμβολαίῳ μείζονα ἑαυτὸν εἶναι μετὰ ὅρκου βεβαιώσηται, καὶ οὕτως οὐκ ἀποκαθίσταται, εἰ μὴ φανερῶς καὶ προδήλως δι' ἐγγράφων συμβολαίων παρ' αὐτοῦ φερομένων, οὐ μὴν διὰ μαρτύρων καταθέσεως, ἑαυτὸν ἐλάττονα εἶναι ἀποδείξῃ..", *Hexabiblos*, 1,12,45, Heimbach, *Hexabiblos*, p. 150 and Pitsakis, *Hexabiblos*, pp. 73-74. In the *Hexabiblos*, 1,13,20 there is another example of the importance of the "σωματικός ὅρκος": "'Εὰν ἐν συνεστῶτι τῷ γάμῳ γυνὴ πωλήσῃ τι, κἂν σωματικὸς ὅρκος προβῇ, εἴ τι γένηται, ἄκυρον τὸ πραχθὲν καὶ ἀναστρέφεται πάλιν τὸ πραθέν."; namely that if, during the marriage, the wife sells something and in connection with that a corporal oath has even been made, the sale is considered void and the object has to be returned.

[1221] *Peira*: 67,2. Simon refers to it in *Zivilprozess*, p. 343.

[1222] *Epistle* of St. Paul to the Hebrews 6,16.

[1223] See *Medieval Latin Dictionary* , p. 361 with references to Medieval sources; see also Wetzell, *System*, p. 258.

A characteristic example here is a treaty between Genoa and the count of Ventimiglia and his son in 1193; in this treaty it is mentioned that the consuls of Genoa promise upon what is agreed by touching the Gospels.[1224] Further on in the same document, the count of Ventimiglia and his son in their turn have promised in person and by touching the Gospels upon this treaty that:

> "…in quorum presentia iuravit tactis corporaliter sacrosantis[1225] evangeliis, hanc totam conventionem Otto comes Vintimilii et filius eius Henricus subsequenter salva fidelitate domini Henrici Romanorum imperatoris et semper augusti.[1226]"

The oath described here is, a corporal oath since the expression *corporaliter* is used and it is clear from the passage that this oath was not just an oath inserted in the document but it was taken in person and by touching the Gospels.[1227] This corporal oath was not only used in treaties but also in private documents of that time where it has the same function, namely it is used as a means of assurance, a kind of guarantee that the parties involved will observe what has been agreed.[1228]

Simon argues that the corporal oath of Byzantine law has nothing to do with the corporal oath of the Middle Ages, namely the oath sworn by touching the Gospels. Simon provides a different interpretation of the corporal oath in Byzantine law and does not accept that the corporal oath in Byzantine law was made upon the Gospels.[1229]

In the examined acts we have come across the term corporal oath ("σωματικὸς ὅρκος" in Greek), which is translated in the Latin text as either *corporale sacramentum*, *corporale iuramentum* or *iusiurandum corporale* in

[1224] "…predicta omnia per nos et heredes nostros consulibus Ianue pro Comuni promittimus et iuramus tactis sacrosanctis evangeliis, rata et firma et inconcussa in perpetuum habere comuni Ianue" in *Cod. Dipl. Genova*, vol. III, p. 94, lines 25-27, no 32.

[1225] This is how this word appears in the edition; probably "sacrosanctis" is meant here.

[1226] *Cod. Dipl. Genova*, vol. III, p. 95, lines 5-8, no 32.

[1227] For similar examples, see *Cod. Dipl. Genova*, vol. III, p. 42, lines 24-25, no 17; p. 85, lines 13-14, no 27; p. 115, lines 8-9, no 40; p. 118, lines 14-15, no 44. There are also many examples in which a word like "corporaliter" or a word meaning "touching the Evangelia" are not included but the procedure described is the same, namely a person takes an oath on the Evangelia in person, see for example, Müller, *Documenti*, p. 63, line 35, no XXXVIII p. 69, lines 45-46, no XLII; p. 70, line 11, no XLIII.

[1228] See for example, Venetian documents in Lanfranchi, *Famiglia Zusto*, p. 16, line 10, no 3; p. 21, line 34, no 5.

[1229] "Der ὅρκος σωματικός ist, wie der Kommentar des Thalelaios ergibt, der in Person tatsächlich abgelegte Eid, über den eine Eidesurkunde aufgenommen wurde: Ὁ ὅρκος σωματικῶς ἐδόθη παρὰ σοῦ, τουτέστιν αὐτῇ τῇ ἀληθείᾳ ἐπωμόσω…(BT. 593/25) im Gegensatz zu der der Urkunde beigefügten Eidesklausel (ὅπου ἐνεγράφη τῷ συμβολαίῳ μόνον ὁ ὅρκος), welche nichts darüber sagt, dass der Aussteller σωματικῶς καὶ τῇ ἀληθείᾳ geschworen hat. Mit dem "körperlichen Eid" des mittelalterlichen und gemeinen Rechts, d.h. dem Eid unter Berührung der Evangelien, hat dieser Schwur, entgegen der bislang vertretenen Ansicht, also nichts zu tun.." in Simon, *Zivilprozess*, p. 343.

total in four acts.[1230] The four acts in which these terms appear were all issued by the same emperor, Isaac II Angelos in approximately the same year, namely three acts in 1192 and one in 1193. However, there are earlier acts in which the term corporal oath is not actually used, yet the procedure is more or less the same. In these acts, the envoys promise in person on the Gospels upon an agreement and this is put down in writing.[1231] Here, the corporal oath is used as means of assurance, as a guarantee that the corresponding city will observe the agreement. In the examined cases, the term corporal oath is mentioned at the point where the Italian envoys take the oath in person; thus, they promise in person on the Gospels to uphold the content of what is agreed and this is put down in a document.[1232] This oath was connected to the formalities of the act generally, and is thus always mentioned at the point where the other formalities of the act are mentioned, namely the signatures or the seals.

These acts were, moreover, made in Constantinople and were originally in Greek since they were official acts of the emperor addressed to the Italian city-states. The persons who swear a corporal oath in these documents are always Italians; no Byzantine official has to swear an oath. The reason for this is that the Italian side is represented by envoys and it is the Byzantine side that has to be assured that the agreements will be observed by the corresponding Italian city-state. As I have explained, a strong and effective means of ratification had to be used in order to certify that the Italian cities would actually observe the agreements that the Italian envoys made with the emperor. It had to be a means that was known and recognized in both legal worlds, a means, in other words that could satisfy both sides, the Eastern-Byzantine and the Western-Italian. In Byzantine legal practice, a corporal oath was of strong value and by its use the Byzantine side would have felt assured that the agreement made would be valid. But the corporal oath was also known in the West.

Hence, in serving as a stronger formality of the act, this oath 'helped' in concluding the treaty; in short, because it possessed a stronger value as a formality of the act, using the corporal oath saved time for both parties. The corporal oath, used in both Eastern and Western legal traditions becomes in the examined Byzantine acts a unifying factor for both sides that look to it as a means of assurance. Finally, the importance and effectiveness of the corporal oath could be described no better than by the emperor himself, who in a privilege act for Genoa in 1193, mentions that he confirms his former

[1230] Reg. 1607, Reg. 1609, Reg. 1610 and Reg. 1616.

[1231] For example, in the chrysobull of Manuel I Komnenos in favour of Pisa (Reg. 1499[1400]) in 1170 it is mentioned that the Pisan envoys have sworn in person an oath before the Byzantine emperor and this oath is inserted in the chrysobull word for word; actually the consul is first to swear the oath, followed by the other two envoys. For the Greek text see *MM*, vol. 3, p. 45, no VII and for the Latin text Müller, *Documenti*, p. 54, no XXXIV.

[1232] Reg. 1607, Reg. 1609, Reg. 1610 and Reg. 1616.

chrysobull because the Genoese living in Constantinople have confirmed the agreement by their signatures and by a corporal oath.[1233]

[1233] Reg. 1616, *MM*, vol. 3, p. 43, lines 7-13, no VII: "ἐπεὶ δὲ διὰ τὸ παρεμπεσὸν σκάνδαλον καὶ ἑτέρῳ χρυσοβούλλῳ τῆς βασιλείας μου τὸν προαπολυθέντα ἐπὶ τῇ συμφωνίᾳ αὐτῶν χρυσόβουλλον λόγον τῆς βασιλείας μου ἐπικυρωθῆναι ἠτήσαντο, κατανεύει καὶ πρὸς τὴν τοιαύτην αὐτῶν ἡ βασιλεία μου αἰ.τησιν, ὡς καὶ αὐτῶν ἐγγράφῳ αὐτῶν καὶ τῶν ἐν τῇ Μεγαλοπόλει ἐκκρίτων Γενουϊτῶν ἐνυπογράφῳ καὶ ὅρκῳ σωματικῷ ἐπὶ τῷ ἐγγράφῳ τὴν προομοθεῖσαν συμφωνίαν αὐτῶν ἐνταῦθα ἐπικυρωσάντων…."

5.4 Oaths of loyalty to the emperor

In some acts it is mentioned that the Italians have promised to be loyal to the Byzantine emperor. For example, in the chrysobull of Manuel I Komnenos to Venice in 1147[1234] the Venetians promise that they will observe their loyalty and services to the empire.[1235] In 1187, Isaac II Angelos issues three chrysobulls in favour of Venice. In the last one,[1236] it is mentioned that the doge, Aureus Magistropetrus, will swear an oath of loyalty to the emperor and that the future doges will have to swear the same kind of oath.[1237] It should be mentioned that an oath of loyalty to the emperor was not something unknown to the Byzantine world.[1238] In many of our acts we have come across the terms "fides et devotio" (and in Greek "δουλεία καὶ εὔνοια") or similar expressions used to refer to the Italians.[1239] In one letter by Isaac II Angelos that was issued in 1188 and addressed to the Genoese Baldovino Guercio, Guercio is referred to as a "liegeman" (*vassal*) of the emperor ("λίζιος τῆς βασιλείας μου" in Greek and in Latin *as vassallus imperii mei*).[1240] In a later chrysobull by the same emperor, the Genoese Baldovino Guercio who was acting as a Genoese envoy in this instance, is mentioned again as a most faithful "liegeman" of the emperor.[1241] The word "liegeman" (λίζιος) is mentioned in one more act which is an imperial letter addressed to the authorities and people of Genoa.[1242] The emperor complains because despite their agreements with the emperor, some Genoese together with some Pisans have pillaged a Venetian ship and have attacked another ship from Lombardy. In attacking this last ship, they killed a number of people aboard but they released both Ugo Hispano (presumably a monk) and the liegeman knight (λίζιος καβαλλάριος) of the empire, Pipin from Pisa.[1243]

[1234] Reg. 1365.

[1235] Pozza and Ravegnani, *I trattati*, p. 63, version C, lines 15-17, no 4: "Venetici autem solita sibi sacramenta facientes observabunt fidem et servitutem, quam nostre celsitudini debent et Romanie, ipsis operibus puram et vere rectam."

[1236] Reg. 1578.

[1237] See Reg. 1578.

[1238] See Svoronos, *Le serment*, pp. 106-142.

[1239] See Reg. 1255, Reg. 1304, Reg. 1365, Reg. 1373, Reg. 1488, Reg. 1498, Reg. 1576, Reg. 1578, Reg. 1590, Reg. 1607 and Reg. 1616.

[1240] See Reg. 1582 in *MM*, vol. 3, p. 1, line 3 and p. 2, line 20, no I; for the Latin text, see *Nuova Seria*, p. 407, line 3, no VI.

[1241] Reg. 1616 in *MM*, vol. 3, p. 42, line 25, no VII: "…τὸν τε πιστότατον λίζιον αὐτῆς Βαλδουῖνον Γέρτζον" and in Latin in *Cod. Dipl. Genova*, vol. III, p. 104, lines 2-3, no 35: "…fidelissimum nempe vassallum ipsius Balduinum Guercium…" On this lord-vassal relationship between the emperor and Guercio, see Day, *Genoa's response*, p. 43, footnote 59 and pp. 108-134.

[1242] Reg. 1612.

[1243] *MM*, vol. 3, p. 38, lines 28-30, no VI: "καὶ τὸν φρέριον Σπανίουλον Οὖγον καὶ τὸν λίζιον καβαλλάριον τῆς βασιλείας μου Πιπῖνον τὸν Πισσαῖον…." and the Latin translation in *Cod.*

These expressions, in combination with the oaths of loyalty made by the Italians, raise the question whether there was a kind of feudal relationship between the Byzantine Empire and the Italian cities based on these documents. Much has been written about whether Byzantium was familiar with the concept of the feudal system and whether the political system of Byzantium showed similarities to the feudal system that evolved in the West. This issue has been the subject of strong controversy and scholars disagree on whether the term 'feudalism' can be applied to Byzantium or not.[1244] I do not intend to examine this issue here, but likewise I cannot ignore the terms that I have encountered in my material and therefore, some remarks must be made on whether a kind of feudal relationship existed between Byzantium and the Italian cities based on the information in the Byzantine imperial acts that I have examined.

As is well known, the system of feudalism is based on the relationship between a lord and vassal in which the latter obtains a fief under certain conditions; the oath of fealty, the oath of loyalty or fidelity that the vassal promises to his lord is essential to this vassal relationship.[1245] In any case, the term 'vassal' or 'liegeman' (λίζιος) is a term that corresponds to the feudal system in the West. However, through the Crusades, the Byzantine emperors had some experience in concluding treaties with Western kings.[1246] It is interesting to note that the word 'liegeman' (λίζιος) is included in another well-known Byzantine document, the treaty of Devol. This treaty was an agreement made in 1108 between Alexios I Komnenos and Bohemund I of Antioch. Although the treaty itself has not been preserved, we have indirect references to it in the historal account written by Anna Komnene, the *Alexias*.[1247] In this history, more than once Bohemund is described as a liegeman (λίζιος) of the Byzantine emperor. Bohemund expresses his will to become liegeman of the Byzantine emperor and swears an oath of loyalty to his master, an oath which Anna Komnene has inserted in her history.[1248] He agrees to defend the empire when needed and for these services he will receive an annual payment; moreover, the emperor grants him some areas including part of Antioch. Anna Komnene recounts that Bohemund is granted these areas under the condition that he observes pure loyalty and sincere goodwill (φυλάττειν πίστιν

Dipl. Genova, vol. III, p. 80, lines 14-15, no 25: "et fratrem Ugonem Hispanum et vassallum equitem imperii mei Pipinum Pisanum…."

[1244] See *ODB*, vol. 2, p. 784 with references.

[1245] On the system of feudalism, see Ganshof, *Feudalism*.

[1246] For this observation, see Heinemeyer, *Verträge*, p. 88, footnote 32. See also Ferluga, *La ligesse*, pp. 97-123.

[1247] Reg. 1243.

[1248] I quote a characteristic passage: "….ὥστε λίζιον γενέσθαι τοῦ σκήπτρου σου ἄνθρωπον καὶ, ἵνα σαφέστερον εἴποιμι καὶ φανερώτερον, οἰκέτην καὶ ὑποχείριον, ἐπειδὴ καὶ σὺ ὑπὸ τὴν σὴν δεξιὰν ἔλκειν ἐμὲ βεβούλησαι καὶ ἄνθρωπον σου ἐθέλεις ποιήσασθαι λίζιον." in An.Komn., 13,12,1 (414/10-13). For the word "λίζιος" see also id. 13,12,2 (414/24); 13,12,4 (415/44); 13,12,8 (416/84); 13,12,19 (420/32); 13,12,25 (421/92).

ἀκραιφνεστάτην <καὶ> εὔνοιαν καθαρὰν),[1249] an expression that reminds us of some expressions we have seen in our acts. The word liegeman (λίζιος) and the procedure described here correspond to the feudal system that was known in the West and was developed by the Crusader kings. As Ferluga has suggested, in trying to establish relations with the Crusader kings, the Byzantine emperor searched for a formula that was known and accepted by them, but at the same one that was capable of conveying his own conditions. The fact that the vassal was subordinate to a lord corresponded to the theory of the Byzantines that the emperor was the head of the hierarchy in the Byzantine state.[1250]

In our documents, as I have already mentioned, the word 'liegeman' (λίζιος) is used in a total of three acts and it is worth taking a closer look at how exactly the term is used. In the first act by Isaac II Angelos in 1188 addressed to the Genoese, Baldovino Guercio, he is mentioned as liegeman of the emperor.[1251] This letter is addressed only to that person and not to the authorities or the people of Genoa.[1252] The emperor reassures Guercio that he has received his letter of apology and that he is willing to see him. The emperor adds that Guercio mentioned in his letter that the Genoese had complained because a Genoese envoy was sent back. The emperor adds that he will allow the Genoese to enjoy their freedom if they do not raise new and burdensome requests. Nothing is mentioned about whether Guercio was acting in an official capacity on behalf of the Genoese authorities or whether he was a consul or an official envoy of Genoa. However, in a later act, a chrysobull by Isaac II Angelos in 1193, the same Genoese is mentioned again, but this time as an imperial vassal; in this instance he is acting as an official envoy of Genoa.[1253] Baldovino Guercio (Βαλδουΐνος Γέρτζος) had indeeed become a vassal (*lizios*) of the Byzantine emperor.[1254] We have indirect references in a letter of instruction for the Genoese envoys in 1201 for a chrysobull that was granted to Baldovino Guercio by Manuel I Komnenos by which this Genoese was granted a house and some goods as fiefs (*casalem et possessiones in feudi beneficium*) for his services to the Byzantine Empire.[1255] In the letter addressed to Genoa in 1192 mentioned above, another person, this time a Pisan named Pipin is described as a liegeman knight to the emperor.[1256] This person does not act as a

[1249] *An. Komn.*, 13,12,19 (420/29-30).
[1250] See Ferluga, *La ligesse*, pp. 108-109. For the word "λίζιος" (liegeman) see also *ODB*, vol. 2, 1243.
[1251] Reg. 1582. In Greek the word "λίζιος" is used and in Latin the word "vassalus" see *MM*, vol. 3, p. 1, line 3, no I and *Nuova Seria*, p. 407, line 3 respectively, no VI.
[1252] The letter ends with: "Βασιλικὸν πρὸς τὸν πιστοτάτον λίζιον τῆς βασιλείας μου τὸν Βαλδουΐνον Γέρτζον". See *MM*, vol. 3, p. 2, lines 20-21, no I.
[1253] See Reg. 1616 and the text cited above.
[1254] See *ODB*, vol. 2, p. 886.
[1255] See Reg. 1549d and Reg. 1549e. See *Cod. Dipl. Genova*, vol. III, p. 196, lines 9-10, no 77. On this person, see also Gastgeber, *Übersetzungsabteilung*, vol. 3, no 29, p. 202, commentary, line 2.
[1256] See Reg. 1612.

representative of Pisa nor do we hear about him in following acts. Hence, the word "vassal" in our documents is used three times to describe a specific vassal relationship that the emperor has with two different persons, Baldovino Guercio and Pipin of Pisa. The fact that Guercio is also mentioned as a vassal in an act by which he acts as an official Genoese envoy, does not by any means indicate that the city of Genoa was in a vassal relationship to the emperor.[1257] The term is not used in our documents to describe an Italian official who would act as a leader of the city, for example, the doge of Venice or the consuls of Pisa or Genoa. Expressions such as "πίστιν καὶ εὔνοιαν" of the Italians are included frequently and the Italians (the Italian population and / or Italian authorities) take oaths of loyalty to the emperor. However, these elements within the examined material are not sufficient to allow us to speak of a vassal relationship of the Italian cities to the Byzantine emperor. The special personal bond between the vassal and the lord is also characteristic of a vassal relationship. From the examined material, it seems that some Genoese or Pisan private persons could have had a vassal relationship with the emperor, but we can by no means say that the Italian cities were vassal states to the emperor. In other words, a fidelity oath to a leader was something common in the Middle Ages and did not always indicate a vassal relationship. Lilie writes that "the Pisans became vassals of the Byzantine emperor"[1258] but I do not agree with this opinion for the following three reasons. First of all, I do not understand why Lilie believes that this is the case for the Pisans only. The Genoese and the Venetians also made similar oaths of loyalty to the Byzantine emperor. Secondly, it was common in the Middle Ages to take an oath of loyalty; this did not necessarily mean that the people who promised became vassals. And thirdly the word "vassal" is not included in any of the Byzantine imperial acts referring to Pisans, Genoese or Venetians. It is however, included in references to specific persons (the Genoese Baldovino Guercio and the Pisan Pipin) who were vassals of the emperor, as I have explained.

[1257] However, it is interesting that one of the two envoys sent by Genoa for this mission to Constantinople is a liegeman to the emperor. I remind the reader that earlier we had referred to an act of the Genoese envoy by which he promises to fulfill his mission in good faith and for the benefit of Genoa and he forbids his sons from becoming vassals to the emperor, see *Cod. Dipl. Genova*, vol. II, p. 205, lines 14-16, no 95. Perhaps the reason that the Genoese send the emperor an envoy who is also a vassal to the emperor here, is that, as we are informed in that chrysobull (Reg. 1616), they want to apologise to the emperor for the wrongful acts of some Genoese pirates and they want to convince the emperor to ratify his former chrysobull. Moreover, one of these Genoese pirates happens to be a nephew of Baldovino Guercio and this could also be a good reason for sending his uncle to the emperor to apologise on behalf of Genoa and assure him that these Genoese have been expelled from Genoa. See Reg. 1616, *MM*, vol. 3, p. 42, lines 25-30 and p. 44, lines 7-8, no VII.

[1258] Lilie, *Byzantium and the Crusader States*, p. 89.

For the Italian city-republics especially, conducting an oath was a means of exercising their politics.[1259] It seems that the oaths of fidelity promised by the Italians to the Byzantine emperor were close to the oaths that the Italians used in other treaties both in their internal politics and foreign policy. This can be clearly seen by some expressions used in the oaths to the emperor that remind us strongly of oaths that the Italian city-republics promised to each other. For example, the expression "οὐκ ἐσόμεθα ἐν βουλῇ ἢ πράξει" that we have come across in some Byzantine acts[1260] (which sounds rather strange in Greek and corresponds to the Latin expression "non simus in consilio vel in facto") or expressions similar to this were used in oaths of the Italian city-republics in the 12th century.[1261] Moreover, in the examined material the Italians sometimes swear the oath on the soul of their principal or they promise that their principal will swear an oath on his soul in order to observe the agreement that they have reached with the emperor,[1262] something that corresponds to their practice at that time. From these examples and from the way the oaths are formed in our documents, it is most plausible that the oaths that the Italians swore to the emperor in the examined material were not suggested by the emperor but by the Italians themselves. Prutscher, who has examined in detail the function of oaths in the political system of the Italian city-republics and in their foreign affairs, has suggested that because the political and military relations between the Italian city-republics and their *contado* were formed on the basis of feudal Law terminology and because the noble played an important role in the representation of the city-republics, feudal influences could be found in the formation of treaties between the city-republics.[1263] Prutscher has characterised the oath of fidelity of the Pisans to the Byzantine emperor not as a feudal oath, but rather as a standard act of loyalty similar to that in feudal law, which, however, lies within a completely different political and legal context, that of the city-republics.[1264]

[1259] See Prutscher, *Der Eid*, p. 88ff.

[1260] See Reg. 1255, Müller, *Documenti*, p. 43, lines 42-43 and for the Latin see Müller, *Documenti*, p. 52, lines 34-35, no XXXIV; see also the treaty of Genoa with Demetrios Makrembolites in 1155 in *Cod. Dipl. Genova*, vol. I, p. 329, line 7, no 271. For this treaty see Reg. 1402 and Lilie, *Handel und Politik*, p. 91, footnote 19.

[1261] See the oath included in the treaties of Venice with Bari and of Pisa with Amalfi in Prutscher, *Der Eid*, p. 108.

[1262] See for example, Reg. 1607 in Müller, *Documenti*, p. 42, lines 90-94 and lines 104-106, no XXXIV; Reg. 1609 in *MM*, vol. 3, p. 31, lines 1-4 and lines 13-15, no V.

[1263] Prutscher, *Der Eid*, p. 107: "Da das politisch-militärische Verhältnis zwischen Kommune und Contado in den Kategorien und mit der Terminologie des Lehnrehts formalisiert wird und weil der Adel in der kommunalen Repräsentanz eine führende Rolles pielt, müßten lehnrechtliche Einflüsse auch in der Vertragsgestaltung zwischen den Städten nachweisbar sein."

[1264] See Prutscher, *Der Eid*, p. 164, footnote 81: "Aber oben in nn. 26 und 27 haben wir es nicht mit einem Lehnseid, sondern mit einem lehnrechtlich vorgeprägten Treueformular zu tun, das politisch und rechtlich in einem ganz anderen, nämlich im kommunalen Konnex steht, der voll und ganz in das Chrysobull mitübernommen wird."

CONCLUSIONS

This book is a study of the legal issues arising from the Byzantine imperial acts directed at Venice, Pisa and Genoa in the 10th, 11th and 12th centuries. Most of these documents are privilege acts and are in the type of chrysobulls. They have this name because they bore the emperor's golden seal.[1265] The examination of legal issues was made for each city separately and in chronological order in chapters divided as follows: Venice (chapter II), Pisa (chapter III) and Genoa (chapter IV). In the last chapter (chapter V), a comparative approach to common legal issues was made on two levels. Firstly, comparisons were made between the legal issues of the three Italian cities. Secondly, comparisons were made to similar legal issues within a range of other Byzantine and Western sources. The conclusions drawn from the comparative legal analysis of the common legal issues are summarized below, and are followed by two general conclusions.

1. Granting immovable property

In the examined documents, we have seen that the Byzantine emperors granted immovable property in Constantinople to the Italians. This gave rise to the legal question of whether or not the Italians actually acquired the right of full ownership of this property. These grants were described in the examined Byzantine acts as "donations" and it was repeatedly mentioned that the Italians had the *possessio* ("νομή" or / and "κατοχή") of this property. In the examined Byzantine acts, no word is included that is related to the idea of "full ownership" in either Greek or Latin, whereas in Byzantine legal practice of that time we do come across such a word ("δεσποτεία" or "κυριότης") when transfer of ownership takes place.[1266] What the Italians receive here with regard to the immovable property must have been something more than just *possessio*. This opinion is strengthened by the fact that an act of delivery was made and guarantees were given by the emperor.[1267] What the Italians receive seems to resemble most closely the right of *emphyteusis*. Even if the Italians behaved as though they were owners, the fact is that the emperor in these acts never intended to transfer the ownership of these areas. This was undoubtedly politically motivated. The emperor would not have allowed the Italians full ownership of land in the Byzantine capital, and surely would not have accepted

[1265] The word chrysobull in Greek (χρυσόβουλλον) derives from the words "chrysos" (χρυσός) meaning "gold" and "bulla" (βούλλα) meaning "seal".
[1266] See chapter V,2.2 and the reservations expressed regarding legal terminology in Byzantine law.
[1267] See the arguments in chapter V,2.3 and 2.4.

something like this in an imperial document. If, in the end, this was different in practice is another matter.

Regarding the legal terminology used, in comparing these acts to the privilege charters granted by the Crusader kings to the Italians, there is at first glance a similarity between the Italian possessions in Constantinople and in the Crusader states: the word *dominium* is not used in these charters.[1268] However, that this word is not used in these charters presumably has to do with elements of feudal law. There is, in any case, a clear difference between the Byzantine and the Crusader's grants of immovable property to the Italians with regard to the legal terminology used. In the Byzantine imperial acts, these grants are defined using Roman law terms, such as "νομή" (*possessio*). In the Crusader's charters, on the other hand, there is usually a long description of what the Italians are allowed to do with the granted immovable property, something that must also be related to feudal law practices of that time.[1269] The same long description is included in acts by which the Italians concede immovable property that has been granted to them either by the Byzantine emperors or by the Crusader kings to some other person or institution. Another difference between the Byzantine documents and the charters of the Crusader kings is that in the latter case there is no reference made to an act of delivery, whereas in Byzantine practice such an act (*praktikon paradoseos*) is always mentioned.[1270]

Regarding the formalities of the delivery of the immovable property in the examined Byzantine imperial acts towards the Italian city-states, there is a resemblance to Byzantine legal practice and the use of the *traditio per cartam*. An act of delivery (*praktikon paradoseos*) describing the immovable property had to be drafted. This act, usually drawn up by an imperial notary (and sometimes ratified by a Byzantine officer) had to be registered together with the chrysobull at the competent Byzantine office; no other action was necessary.[1271] In the Crusader charters, no reference is made to the formalities of such an act.

[1268] See chapter V,2.6.
[1269] See chapter V,2.6.
[1270] See chapter V,2.6.
[1271] See chapter V,2.3.

2. Justice

In the field of justice, there is a clear difference between Venice, on the one hand, and the other two Italian cities, Pisa and Genoa, on the other. First of all, Venetians received a legal advantage regarding the juridical procedure since it was regulated, more than once, that one Byzantine authority, the *logothetes tou dromou*, would be competent to judge cases involving Venetians.[1272] Having had one judge, who was a Byzantine official of high authority, to deal with their cases and provide consistent case law led to the acceleration of Venetian cases. But most important for the understanding of the legal position of the Italians within the Byzantine Empire is undoubtedly the clause of the chrysobull of Alexios III Angelos in 1198. By this act, the Venetian judge in Constantinople received jurisdiction for some cases between Venetians and Byzantines. This is a legal privilege that only Venetians were in a position to receive and proves that the Venetians were a special category of foreigners who enjoyed legal privileges within the empire, at least at the end of the 12th century.[1273]

Comparison to the Crusader charters shows that the Crusader leaders had allowed jurisdiction to all three Italian city-republics.[1274] In the Crusader states, therefore, it was not only Venetian judges who were allowed to judge some mixed cases -namely those cases arising between Venetians and others- but Pisan and Genoese judges had also obtained this privilege. There is, however, a clear difference between the jurisdiction allowed to the Venetians by the act of Alexios III Angelos, and the jurisdiction allowed to the Italians by the Crusader kings. In the latter case, in most instances, Italians received territorial jurisdiction, meaning that they received jurisdiction *over all inhabitants* living in their quarters. Another difference between the chrysobull of Alexios III Angelos in favour of Venice and the Crusader charters regarding competent judges is that in the Crusader charters, information about the applicable law was sometimes provided.[1275] On the contrary, in the chrysobull of Alexios III Angelos to Venice, nothing is mentioned about the law according to which the Venetian judges had to judge mixed cases.

[1272] See chapter V,3.1.
[1273] See the examination of Reg. 1647 in chapter II,7. See also Penna, *Venetian judges* and *Legal autonomy*.
[1274] See chapter V,3.2.
[1275] See chapter V,3.2.

3. Maritime law, shipwreck and salvage issues

While the Byzantine imperial acts directed at Venice do not include provisions regarding shipwreck and salvage, those directed to Pisa and Genoa do. It is difficult to give a satisfactory reason for this. Perhaps such provisions were regulated only in the acts for Pisa and Genoa because these two cities had, in the past, shown "hostilities at sea" to the Byzantine Empire.[1276] Especially with regard to Pisa, one factor could have been that this city had developed maritime law rather early and had proceeded in setting it down in statutes. As the chrysobull of Alexios I Komnenos to Pisa demonstrates, it seems that local custom played a rather important role in the development of Byzantine maritime law[1277]. In that chrysobull, the emperor orders that local custom will be applied in determining the reward for the salvaging of goods from a shipwreck. This clause is a concrete example of the statement often appearing in Byzantine legislative texts, that custom is an important legal source.[1278] Moreover, the Byzantine emperor's preference for local custom is in accordance with the general practice in the medieval Mediterranean world to apply local custom and practices in the field of maritime law.[1279] It is also worth mentioning that in the 10th century the Byzantine emperor had already regulated issues of maritime law and shipwreck provisions with the Rus.[1280] However, there seems to be an important difference between the provisions on maritime law in our acts and those in the Russo-Byzantine treaties. The latter treaties aim to secure Byzantine interests in respect to maritime law whereas in our acts it is the Italian interests that are at stake. In the examined material, nothing is mentioned about the assistance that the Italians must provide when a Byzantine ship is in danger. In the Russo-Byzantine treaties, on the other hand, detailed descriptions are provided of how the Rus must help in such cases and severe penalties are included.[1281]

[1276] See Laiou, *Byzantine Trade*, p. 181.
[1277] See chapter V,4.3.
[1278] See chapter V,4.3.
[1279] See Constable, *Jettison*, especially p. 217.
[1280] On the Rus and the Russo-Byzantine treaties, see footnote 1037.
[1281] See chapter V,4.4.

4. Oaths

In the examined material we have encountered different kinds of oaths: i. oaths sworn by certain persons as a means of assurance that they will fulfill their tasks, ii. oaths sworn by the Italian envoys by which they confirm that what was agreed with the emperor would be observed by their cities and iii. oaths by which the authorities and the population of an Italian city ratify the agreement that their envoys had reached with the Byzantine emperor.[1282] The oath which is sworn by the envoys in person upon the Gospels is sometimes described as a corporal oath (σωματικὸς ὅρκος). This is the most comprehensive means of guaranteeing that the corresponding Italian city would observe the agreement; it therefore plays an important role in the making of the treaty. According to Byzantine legal sources, the corporal oath could serve as strong evidence; it had greater value, for example, than a written oath (ἔγγραφος ὅρκος).[1283] We also come across the corporal oath in the West at that time, where it was referred to as *sacramentum corporale* or *corporale iuramentum* or similar term. In these documents it has the same meaning: an oath taken in person on the Gospels.[1284] Hence the corporal oath, a legal device known in both worlds, East and West, serves here as a strong guarantee that the Italian city would ratify the agreement reached with the emperor.

There is also information in our acts that the Italians swore oaths of loyalty to the Byzantine emperor[1285]. In some acts, we come across the term "liegeman" ("λίζιος" in Greek and *vassalus* in Latin). The question arises as to whether the Italian city-states could have been in a feudal relationship with the Byzantine emperor. The term "liegeman" (λίζιος) is used in three acts and refers to two specific persons: the Genoese, Guercio Baldovino, and the Pisan, Pipin. From the documentation of that time, there is evidence that Baldovino Guercio was indeed in a vassal relationship with the Byzantine emperor.[1286] This was not out of the ordinary, as the Byzantine emperor had pronounced certain foreigners his vassals because of their services.[1287] Although less is known about the Pisan Pipin, it is mentioned in the sources that he too was a vassal to the emperor. The fact that some specific Italian persons were vassals to the emperor does not mean that their native Italian city was also in a vassal relationship to the Byzantine emperor. In our acts, the term *lizios* is never given to the authorities of any Italian city-state, for example, to the doge of Venice or to a consul of Genoa or Pisa. The fact that Italians (including authorities, namely the doge and the consuls) took oaths of fidelity and loyalty to the

[1282] See chapter V,5.2.
[1283] See chapter V,5.3.
[1284] See chapter V,5.3.
[1285] See chapter V,5.4.
[1286] See chapter V,5.4.
[1287] On this issue see Ferluga, *La ligesse*.

Byzantine emperor does not indicate that they and their city were in a vassal relationship with the Byzantine emperor. Swearing such oaths was common practice in the Middle Ages and it played an important role especially in the Italian city-republics.[1288]

5. General conclusions

In addition to the above conclusions drawn separately for each legal issue, two general conclusions can be drawn from this study. The first conclusion is related to one of the questions posed in the beginning of this book, namely whether some Italians were more privileged than others in respect of legal matters.[1289] Indeed, the Venetians enjoyed a better legal position than the other Italians. This situation was already suggested in the first preserved chrysobull in favour of Venice in 992,[1290] but it was clearly put down in the chrysobull of 1198 by Alexios III Angelos.[1291] It is in that document that for the very first time a foreign judge, namely a Venetian, was allowed to judge mixed cases in Constantinople, subject, of course, to certain conditions.[1292] In that document, measures were also taken in order to protect the estate of a deceased Venetian from claims made by the Byzantine state.[1293] No similar provisions were regulated for the other Italians or for other foreigners by the Byzantine emperors. These measures were adopted upon the initiative of the Venetians themselves. The Venetians were interested in gaining such legal privileges: not only were they in a position to request such privileges, but they actually received them. The Venetians were, in effect, the first Italians to receive commercial and legal privileges from the Byzantines. The number of privilege acts corresponding to every Italian city-state also strongly suggests the privileged position of the Venetians. Venice had received twelve privilege acts in total from the Byzantine emperors within the years 992-1198, whereas Pisa had received only three such acts between 1111 and 1192, and Genoa had received five privilege acts between 1169 and 1193. The reasons why the Venetians enjoyed a better legal position than the other Italians and probably than any other foreign presence within the Byzantine Empire, undoubtedly has

[1288] On this issue, see Prutscher, *Der Eid*.
[1289] See chapter I,1.
[1290] See the examination of Reg. 781 in chapter II,1 and chapter V,3.
[1291] See the examination of Reg. 1647 in chapter II,7 for a detailed analysis of the legal issues of this document and chapter V,3.
[1292] See the examination of Reg. 1647 in chapter II,7.2.
[1293] See the examination of Reg. 1647 in chapter II,7.2.7.

to do with the special political, diplomatic and even cultural bond with which Venice was connected to Byzantium, a subject studied by many scholars.[1294]

The second general conclusion drawn from this study deals with the legal background of these acts.[1295] These acts suggest that there was a common legal understanding between Byzantium and the Italian cities, between East and West, in any case in the 11th and 12th centuries. It is difficult to imagine that, without a common legal understanding between both parties, agreements on legal issues would have been reached in these documents. It is clear that the Italians accepted practices that corresponded to Byzantine legal practice, for example, in issues dealing with the granting of immovable property. We have seen that for the granting of immovable property to the Italians, an act of delivery had to be made (*praktikon traditionis*) and this act had to be registered with the chrysobull at the competent imperial office. This corresponds to Byzantine legal practice of that time. Interestingly, in their own documents the Venetians use the Byzantine term *praktikon* when describing the grant of the Byzantine emperor rather than a Latin term.

It is commonly known that Roman law was rediscovered in the West in the 11th century, but these documents offer a good example of how the ground was prepared for the reception of Roman law because in Byzantium, the continuation of Roman law was never in doubt. Although the examined Byzantine imperial acts are not sophisticated as far as the legal terminology is concerned, they are different from the Crusader's charters in that they reflect a more sophisticated legal development. Roman terms were used in Byzantine imperial documents: the Italians receive the "νομή" in Greek or *possessio* in Latin of areas in Constantinople and the delivery described in our acts seems to correspond to the Byzantine tradition of the *traditio per cartam.* In the privilege charters of the Crusader kings, on the contrary, a long description is made in order to show what is allowed in the areas acquired by the Italians and no reference is made to an act of delivery or its formal requirements. In the Crusader states we are clearly dealing with the influence of feudal law. It is possible that the experience of the Italians with Byzantine diplomacy affected the later drafting of charters in the Crusader states and the Italian 'legal tradition'. Perhaps a study of Italian documents after 1204 could indicate whether there had been some Byzantine influence in the Italian legal tradition.[1296] After all, there had always been a particular Byzantine influence in Italy, especially in the south.[1297] In any case, the Italians considered Byzantine imperial privileges important even after the sack of Constantinople in 1204.

[1294] Much has been written about the political, diplomatic and commercial relations between Venice and Byzantium, see, for example, Nicole, *Byzantium and Venice*, Lilie, *Handel und Politik*, pp. 1-68.

[1295] See the questions raised in chapter I,1.

[1296] Such a study is beyond the scope of this thesis.

[1297] See, for example, Von Falkenhausen, *Untersuchungen*; Brandileone, *Il diritto* and Cavallo, *La circulazione*.

This can be seen in the treaties which the Crusaders signed with the Venetians just before the sack of the Byzantine capital. In the treaty of March 1204, the parties dealt with practical problems that would arise after the conquest of the city. In article four of this treaty, it is stated that the Venetians will preserve all the privileges and concessions that they had before the conquest.[1298] Hence, privileges that the Italians, in this case the Venetians, had been granted by the Byzantine emperors were still influential even at a time when Westerners were making agreements upon the disintegrating body of the Byzantine Empire. It is ironic that two months after the Crusader-Venetian treaty of March 1204, the count of Flanders, Baldwin IX, was to be crowned as emperor Baldwin I of Constantinople in the church of Hagia Sophia in a ceremony modelled on Byzantine traditions.

[1298] *TTh*, vol. I, p. 446, lines 21-25, no CXIX. See also Hendrickx, *Thesmoi*, p. 29. The same is repeated in the treaty of October 1205 in article 7. See *TTh*, vol. I, p. 573, lines 14-18, no CLX and Hendrickx, *Thesmoi*, p. 39.

CONCLUSIES

Onderwerp van dit onderzoek zijn juridische kwesties die aan de orde komen in de Byzantijnse keizerlijke documenten die zijn gericht tot Venetië, Pisa en Genua in de 10e, 11e en 12e eeuw. De meeste documenten zijn zogenaamde "chrysobullen": het betreft oorkondes die zijn voorzien van het gouden zegel van de keizer.[1299] De juridische kwesties die in de onderzochte documenten aan de orde komen zijn eerst voor elke stad afzonderlijk en chronologisch behandeld in de volgende hoofdstukken: Venetië (hoofdstuk II), Pisa (hoofdstuk III) en Genua (hoofdstuk IV). In het laatste hoofdstuk (hoofdstuk V) is vervolgens een vergelijking gemaakt op twee niveaus. In de eerste plaats zijn de oplossingen voor die kwesties in de verschillende steden met elkaar vergeleken. In de tweede plaats zijn zij vergeleken met oplossingen voor soortgelijke problemen in andere Byzantijnse en Westerse bronnen. In het navolgende worden eerst conclusies per juridisch onderwerp beschreven en daarna volgen twee algemene conclusies.

1. Onroerend goed

In de onderzochte documenten komen gevallen aan de orde waarin de Byzantijnse keizers onroerend goed in Constantinopel toekenden aan de Italianen. De juridische vraag rijst of de Italianen al dan niet een vol eigendomsrecht op deze onroerende goederen verkregen. Het toekennen van deze goederen wordt in die documenten beschreven als schenking en herhaaldelijk is vermeld dat de Italianen *possessio* ("νομή" of / en "κατοχή") van deze goederen hadden. In die documenten komt geen woord in het Grieks of Latijn voor dat ziet op het idee van volle eigendom. In de Byzantijnse rechtspraktijk van die tijd werd een zodanig woord ("δεσποτεία" of "κυριότης") wel gebruikt in gevallen waarin overdracht van eigendom plaatsvond.[1300] Hetgeen de Italianen ontvingen ten aanzien van het onroerend goed was meer dan enkel bezit. Deze opvatting vindt steun in het feit dat een leveringshandeling werd verricht en in het feit dat de keizer garanties verleende.[1301] Hetgeen zij bij toekenning door de keizer ontvingen lijkt het meest op het recht van erfpacht *emphyteusis*. Ook indien de Italianen zich gingen gedragen alsof zij eigenaren waren, bleef voorop staan dat de keizer

[1299] Het woord chrysobull in het Grieks (χρυσόβουλλον) komt van het woord "chrysos" (χρυσός), dat "goud" betekent, en "bulla" (βούλλα) dat "zegel" betekent.
[1300] Zie hoofdstuk V,2.2 en de opmerkingen over de juridische terminologie in het Byzantijnse recht.
[1301] Zie de argumenten in hoofdstuk V,2.3 en 2.4.

nooit de bedoeling had om de eigendom over te dragen. Ongetwijfeld lagen daaraan politieke redenen ten grondslag. De keizer zou het Italianen nooit hebben toegestaan om de volle eigendom te verkrijgen van grond in de Byzantijnse hoofdstad – in ieder geval zou hij dat nooit hebben toegestaan in een keizerlijk document. Of de prakijk uiteindelijk anders was, is een andere vraag.

Bij een vergelijking van de tot de drie steden gerichte keizerlijke documenten met de documenten waarin de kruisvaarders privileges aan de Italianen verleenden, is er wat de juridische terminologie betreft op het eerste gezicht een gelijkenis tussen de Italiaanse bezittingen in Constantinopel en die in de staten van de kruisvaarders; het woord "dominium" wordt ook in laatstgenoemde documenten niet gebruikt.[1302] Dat dit woord ook in die documenten niet werd gebruikt zou echter van doen kunnen hebben met de invloed van het feodale recht. In elk geval is er wat de gebruikte juridische terminologie betreft ten aanzien van het toekennen van onroerend goed een duidelijk onderscheid tussen de Byzantijnen en de kruisvaarders. In de documenten van de Byzantijnse keizers werd het toekennen van onroerend goed omschreven met begrippen uit het Romeinse recht, zoals "νομή" (*possessio*). In de documenten van de kruisvaarders daarentegen werd doorgaans gebruik gemaakt van een lange beschrijving van wat de Italianen met het toegekende onroerend goed mochten doen, iets wat ook in verband moet worden gebracht met de feodale rechtsgebruiken uit die tijd.[1303] Dezelfde lange beschrijving is te vinden in documenten waarmee de Italianen aan anderen onroerend goed afstaan dat hun was toegekend door de Byzantijnse keizers of door de kruisvaarders. Een ander verschil tussen de Byzantijnse documenten en de documenten van de kruisvaarders is dat in het laatste geval niet wordt gesproken over een leveringshandeling, terwijl in de Byzantijnse praktijk een dergelijke handeling (*praktikon*) altijd wordt vermeld.[1304]

De wijze waarop onroerend goed volgens de tot de drie steden gerichte documenten moest worden geleverd doet denken aan het gebruik van de *traditio per cartam* in de Byzantijnse rechtspraktijk. Er moest een leveringsdocument (*praktikon paradoseos*) worden opgesteld waarin het onroerend goed beschreven werd. Dit document, dat doorgaans werd opgesteld door een keizerlijke notaris (en soms bekrachtigd door een Byzantijnse ambtenaar) moest samen met het document waarin de keizer het onroerend goed had toegekend worden ingeschreven bij de bevoegde Byzantijnse autoriteit. Enige andere handeling was daarvoor niet vereist.[1305] In de documenten van de kruisvaarders komen dergelijke leveringsformaliteiten niet aan de orde.

[1302] Zie hoofdstuk V,2.6.
[1303] Zie hoofdstuk V,2.6.
[1304] Zie hoofdstuk V,2.6.
[1305] Zie hoofdstuk V,2.3.

2. Rechtspleging

Ten aanzien van rechtspleging en competentie bestond een duidelijk onderscheid tussen enerzijds Venetië en anderzijds Pisa en Genua. In de eerste plaats genoten de Venetianen een voordeel omdat meer dan eens was bepaald dat één Byzantijnse autoriteit (de *logothetes tou dromou*) bevoegd is om zaken te beoordelen waarin zij betrokken zijn.[1306] De beoordeling door één rechter, een Byzantijnse ambtenaar met groot gezag die in staat was om vaste jurisprudentie te vormen, leidde tot een versnelling van de behandeling van Venetiaanse zaken. Maar het belangrijkst voor een goed begrip van de juridische positie van de Italianen in het Byzantijnse rijk is ongetwijfeld een bepaling in de chrysobul van Alexios III Angelos uit 1198. Daarin wordt aan de Venetiaanse rechters in Constantinopel ook de bevoegdheid toegekend om recht te spreken in bepaalde zaken tussen Venetianen en Byzantijnen. Het betreft een juridisch privilege dat alleen aan de Venetianen toekwam. Toekenning van dat privilege is een aanwijzing dat de Venetianen een bijzondere categorie vreemdelingen vormden die juridische privileges binnen het rijk genoten, in ieder geval aan het einde van de 12e eeuw.[1307]

Uit de documenten van de kruisvaarders blijkt dat hun leiders jurisdictie toekenden aan alle drie de Italiaanse stadsstaten.[1308] In de staten van de kruisvaarders werd dus niet alleen aan Venetiaanse rechters de bevoegdheid toegekend om bepaalde gemengde zaken te beoordelen – namelijk zaken tussen Venetianen en anderen – maar ook aan rechters uit Pisa en Genua. Er is echter een duidelijk onderscheid tussen de bevoegdheid die door Alexios III Angelos aan de Venetianen werd toegekend en de bevoegdheid die door de kruisvaarders aan de Italianen werd toegekend. Bij de kruisvaarders ontvingen de Italianen in de meeste gevallen territoriale jurisdictie, dat wil zeggen dat zij jurisdictie ontvingen *over alle inwoners* die in hun wijken woonden. Alexios III Angelos kende de Venetianen geen territoriale jurisdictie toe. Een ander verschil ten gunste van Venetië tussen enerzijds de chrysobul van Alexios III Angelos uit 1198 en anderzijds de documenten van de kruisvaarders is dat in laatstgenoemde documenten soms bepalingen over het toepasselijke recht zijn opgenomen.[1309] In eerstgenoemde documenten was dat niet het geval. Zo wordt in de chrysobull van Alexios III Angelos aan Venetië niets bepaald over het recht dat de Venetiaanse rechters bij gemengde zaken dienden toe te passen.

1306 Zie hoofdstuk V,3.1.
1307 Zie hierboven over Reg. 1647, hoofdstuk II,7.2. en Penna, *Venetian judges* and *Legal Autonomy*.
1308 Zie hoofdstuk V,3.2.
1309 Zie hoofdstuk V,3.2.

3. Zeerecht, schipbreuk en berging

De tot Venetië gerichte documenten bevatten geen bepalingen over schipbreuk en berging, de tot Pisa en Genua gerichte documenten wel. Het is moeilijk een bevredigende verklaring te geven voor dit verschil. Een rol zou kunnen spelen dat Pisa en Genua jegens het Byzantijnse rijk blijk hadden gegeven van "vijandigheden op zee".[1310] Wat Pisa betreft zou van belang kunnen zijn dat zij al in een vroeg stadium bepalingen over zeerecht in haar statuten had opgenomen. De tot Pisa gerichte chrysobul van Alexios I Komnenos wekt de indruk dat de plaatselijke gewoonte een belangrijke rol speelde bij de ontwikkeling van het Byzantijnse zeerecht.[1311] In die chrysobul schrijft de keizer voor dat ten aanzien van de beloning bij de berging van goederen die bij een schipbreuk verloren zijn gegaan de plaatselijke gewoonte van toepassing is. Dit voorschrift is in lijn met de vaak in Byzantijnse juridische teksten voorkomende bepaling dat de gewoonte een belangrijke rechtsbron is.[1312] Bovendien is deze voorkeur van de Byzantijnse keizer voor de plaatselijke gewoonte in overeenstemming met de algemene praktijk in de middeleeuwse mediterrane wereld om de plaatselijke gewoonte en gebruiken in het zeerecht toe te passen. Vermeldenswaardig is ook dat de Byzantijnse keizer in de 10e eeuw al bepalingen over zeerecht en schipbreuk was overeengekomen met de "Rus".[1313] Er is echter een belangrijk verschil tussen de bepalingen over zeerecht in de onderzochte keizerlijke documenten en die in de Russo-Byzantijnse verdragen. In laatstgenoemde verdragen lijken de Byzantijnse belangen een overwegende rol te spelen terwijl in de onderzochte keizerlijke documenten de Italiaanse belangen voorop lijken te staan. Zo zijn in de onderzochte keizerlijke documenten geen bepalingen opgenomen die voorschrijven dat de Italianen hulp moeten bieden wanneer een Byzantijns schip in gevaar is. In de verdragen met de "Rus" daarentegen wordt nauwkeurig omschreven hoe de "Rus" in dergelijke gevallen te hulp moeten komen en is in zware straffen voorzien.[1314]

[1310] Zie Laiou, *Byzantine Trade*, p. 181.
[1311] Zie hoofdstuk V,4.3.
[1312] Zie hoofdstuk V,4.3.
[1313] De "Rus" waren van Scandinavische oorsprong. Zij hadden hun hoofdstad gevestigd in Kiev en zij raakten geleidelijk vermengd met de bestaande Slavische bevolking. Voor de "Rus", zie Franklin and Shepard, *The Emergence of Rus* en voor de Russo-Byzantijnse verdragen, zie Sorlin, *Les traités* en Malingoudi, *Verträge* en *Der rechtshistorische*.
[1314] Zie hoofdstuk V,4.4.

4. Eden

In de onderzochte keizerlijke documenten zijn verschillende soorten eden opgenomen: i. eden die werden gezworen door bepaalde personen met de bedoeling om zeker te stellen dat zij hun taken zouden vervullen, ii. eden die werden afgelegd door Italiaanse afgezanten waarmee zij bevestigden dat hun steden zouden nakomen wat met de keizer was overeengekomen iii. en eden waarmee overheidsinstanties en de bevolking van een Italiaanse stad de overeenkomst bekrachtigden die hun gezanten hadden gesloten met de Byzantijnse keizer.[1315] De eed die in persoon werd gezworen op de Evangeliën wordt soms omschreven als een corporale eed (σωματικὸς ὅρκος). Zij vormde het meest krachtige middel om te garanderen dat de desbetreffende Italiaanse stad een overeenkomst in acht zou nemen en zij speelde daarom een belangrijke rol bij de totstandkoming van het verdrag. Uit Byzantijnse bronnen blijkt dat zij sterke bewijskracht had en daarom van meer waarde was dan bijvoorbeeld een geschreven eed (ἔγγραφος ὅρκος).[1316] De corporale eed kwam in dezelfde periode ook in het Westen voor. Daar sprak men over *sacramentum corporale* of *corporale iuramentum* of hanteerde men andere vergelijkbare termen. Steeds ging het echter om eden met dezelfde betekenis als de eden in de onderzochte keizerlijke documenten, te weten, eden die in persoon werden gezworen op de Evangeliën.[1317] In beide werelden, zowel in het Oosten als in het Westen, werd de corporale eed dus gehanteerd en dat zal ertoe hebben bijgedragen dat zij als een sterke garantie gold dat de Italiaanse stad de met de keizer gesloten overeenkomst zou nakomen.

Er zijn ook aanwijzingen in de onderzochte keizerlijke documenten dat de Italianen eden van trouw aan de Byzantijnse keizer zwoeren.[1318] In enkele documenten komt de term "leenman" ("λίζιος" in het Grieks en *vassalus* in het Latijn) voor. De vraag zou dan ook kunnen rijzen of de Italiaanse stadsstaten in een feodale verhouding tot de Byzantijnse keizer stonden. De term "leenman" (λίζιος) wordt in drie documenten gehanteerd en verwijst naar twee specifieke personen: Guercio Baldovino uit Genua en Pipin uit Pisa. Bronnen uit die tijd bevatten aanwijzingen dat Guercio Baldovino inderdaad een leenman van de Byzantijnse keizer was.[1319] Dit was ook niet uitzonderlijk omdat de Byzantijnse keizer bepaalde vreemdelingen gelet op de door hen verleende diensten tot leenman had benoemd.[1320] Hoewel minder bekend is over Pipin uit Pisa wordt in de bronnen vermeld dat hij ook een leenman van de keizer was. Het feit dat bepaalde Italianen leenman van de keizer waren brengt niet mee dat de steden waaruit zij afkomstig waren eveneens in een feodale verhouding tot de

[1315] Zie hoofdstuk V,5.2.
[1316] Zie hoofdstuk V,5.3.
[1317] Zie hoofdstuk V,5.3.
[1318] Zie hoofdstuk V,5.4.
[1319] Zie hoofdstuk V,5.4.
[1320] Zie hierover Ferluga, *La ligesse*.

Byzantijnse keizer stonden. In geen van de onderzochte documenten wordt de term *lizios* gehanteerd voor de overheidsfunctionarissen van één van de Italiaanse stadsstaten zoals bijvoorbeeld de doge van Venetië of de consul van Genua of Pisa. Het feit dat de Italianen (daaronder begrepen overheidsfunctionarissen, te weten de doge en de consuls) eden van trouw zwoeren aan de Byzantijnse keizer betekent niet dat zij of hun steden in een feodale verhouding tot hem stonden. Het zweren van dergelijke eden was gebruikelijk in de middeleeuwen en speelde in de Italiaanse stadsrepublieken een belangrijke rol.[1321]

5. Algemene conclusies

Het verrichte onderzoek geeft behalve tot de zojuist beschreven conclusies per behandeld onderwerp aanleiding tot twee algemene conclusies. De eerste conclusie heeft betrekking op één van de vragen die aan het begin van dit boek zijn gesteld: hadden sommige Italianen meer juridische privileges[1322] dan anderen? Gebleken is dat dit het geval was. De Venetianen hadden een betere juridische positie dan de andere Italianen. De eerste bewaard gebleven chrysobul ten gunste van Venetië uit 992[1323] deed dit al vermoeden maar het bleek duidelijker uit de chrysobul uit 1198 van Alexios III Angelos.[1324] In dat document werd voor het eerst aan een buitenlandse rechter, een Venetiaan, de bevoegdheid toegekend om te oordelen over gemengde zaken in Constantinopel, zij het dat wel zekere voorwaarden werden gesteld.[1325] In dat document waren ook voorzieningen getroffen om te voorkomen dat de Byzantijnse staat bij het overlijden van een Venetiaan aanspraken zou doen gelden op diens vermogen.[1326] De Byzantijnse keizers hadden soortgelijke voorzieningen niet getroffen voor andere Italianen of andere vreemdelingen. De bedoelde voorzieningen ten gunste van de Venetianen waren op hun eigen verzoek getroffen. Zij stelden belang in die voorzieningen en zij verkeerden in de positie om erom te verzoeken en ze ook daadwerkelijk te verkrijgen. Zij waren van alle Italianen ook degenen die het eerst commerciële en juridische privileges van de Byzantijnen verkregen. Ook het aantal keizerlijke documenten dat tot Venetië was gericht in vergelijking met het aantal tot de andere Italiaanse steden gerichte keizerlijke documenten wijst op de bevoorrechte positie van de Venetianen. Tot Venetië waren twaalf keizerlijke documenten gericht tussen

[1321] Zie hierover Prutscher, *Der Eid*.
[1322] Zie hoofdstuk I,1.
[1323] Zie hierboven over Reg. 781, hoofdstuk II,1 en hoofdstuk V,3.
[1324] Zie voor een uitgebreide analyse van de juridische kwesties die in dit document aan de orde komen hierboven over Reg. 1647, hoofdstuk II,7 en V,3.
[1325] Zie hierboven over Reg. 1647, hoofdstuk II,7.2.
[1326] Zie hierboven over Reg. 1647, hoofdstuk III,7.2.7.

992 en 1198 terwijl tot Pisa slechts drie documenten waren gericht tussen 1111 en 1192 en tot Genua vijf documenten tussen 1169 en 1193. De verklaring voor deze bevoorrechte behandeling van de Venetianen – niet alleen vergeleken met de andere Italianen maar ook met andere vreemdelingen buiten Italië – is ongetwijfeld gelegen in de bijzondere politieke, diplomatieke en ook culturele band tussen Venetië en Byzantium, een onderwerp dat door vele geleerden is bestudeerd.[1327]

De tweede algemene conclusie die uit het verrichte onderzoek te trekken is ziet op de in de inleiding van dit boek gestelde vragen over de juridische achtergrond van de onderzochte documenten.[1328] Bestudering van die documenten doet vermoeden dat Byzantium en de Italiaanse steden – het Oosten en het Westen – juridische inzichten gemeen hadden, in ieder geval in de 11e en 12e eeuw. Moeilijk voorstelbaar is dat zij anders overeenstemming zouden hebben bereikt over de daarin behandelde juridische onderwerpen. Duidelijk is dat de Italianen gebruiken aanvaardden die overeenstemden met de Byzantijnse rechtspraktijk, zoals bijvoorbeeld in kwesties betreffende de toekenning van onroerend goed aan hen. Gebleken is dat voor toekenning van onroerend goed aan de Italianen een leveringsdocument (*praktikon traditionis*) moest worden opgemaakt dat samen met de chrysobul moest worden geregistreerd bij de bevoegde keizerlijke instantie. Deze gang van zaken stemt overeen met de Byzantijnse rechtspraktijk in die tijd. Verder is gebleken dat de Venetianen in de van hen afkomstige bronnen de Byzantijnse term *praktikon* gebruikten bij beschrijving van het toekennen van onroerend goed door de Byzantijnse keizer hoewel zij ook hadden kunnen kiezen voor een Latijnse term.

Het is algemeen bekend dat het Romeinse recht in het Westen in de 11e eeuw is herontdekt. De onderzochte keizerlijke documenten zijn een voorbeeld van de wijze waarop een vruchtbare bodem voor de receptie van het Romeinse recht werd gevormd. In Byzantium werd de voortzetting van het Romeinse recht immers nooit in twijfel getrokken. Hoewel de onderzochte Byzantijnse keizerlijke documenten niet verfijnd zijn wat de juridische terminologie betreft, verschillen zij van de documenten van de kruisvaarders in zoverre dat zij getuigen van een verdergaande juridische ontwikkeling. In de Byzantijnse keizerlijke documenten werden Romeinse termen gebruikt: de Italianen ontvingen de "νομή" (in het Grieks) of *possessio* (in het Latijn) van grond in Constantinopel en de in die documenten beschreven leveringshandeling lijkt overeen te komen met het Byzantijnse gebruik van de *traditio per cartam.* In de documenten van de kruisvaarders werden daarentegen lange beschrijvingen gemaakt van wat de Italianen met de hun toegekende grond mochten doen en werd geen melding gemaakt van een leveringshandeling of de formaliteiten

[1327] Er is veel geschreven over de politieke, diplomatieke en commerciële betrekkingen tussen Venetië en Byzantium, zie Nicole, *Byzantium and Venice*, Lilie, *Handel und Politik*, pp. 1-68.
[1328] Zie de vragen die zijn gesteld in hoofdstuk I,1.

waaraan voor levering moest worden voldaan. Laatstgenoemde documenten zijn ongetwijfeld beïnvloed door feodaal recht. Mogelijk heeft de ervaring van de Italianen met de Byzantijnse diplomatie invloed gehad op de totstandkoming van de documenten van de kruisvaarders en op de Italiaanse juridische traditie. Of sprake is geweest van zodanige invloed op de Italiaanse juridische traditie kan wellicht duidelijk worden bij bestudering van Italiaanse documenten van na 1204.[1329] Byzantium heeft immers altijd een bijzondere invloed gehad in Italië, in het bijzonder in het zuiden.[1330] In ieder geval is duidelijk dat de Italianen de Byzantijnse keizerlijke documenten belangrijk vonden, ook na de plundering van Constantinopel in 1204. Dat blijkt wel uit de verdragen die de kruisvaarders met de Venetianen sloten vlak vóór de plundering. In het verdrag van maart 1204 troffen partijen voorzieningen voor praktische problemen die zouden kunnen ontstaan na de verovering van de stad. In artikel 4 van dit verdrag is bepaald dat de Venetianen alle door de keizer toegekende privileges en concessies zouden behouden.[1331] Deze privileges waren dus nog steeds van invloed toen in het Westen regelingen werden getroffen met het oog op de ondergang van het Byzantijnse Keizerrijk. Het is ironisch dat twee maanden na het verdrag van maart 1204 tussen de kruisvaarders en Venetië de graaf van Vlaanderen, Boudewijn IX, zou worden gekroond tot keizer Boudewijn I van Constantinopel in de Hagia Sophia met een ceremonie naar Byzantijnse tradities.

[1329] Zodanige bestudering valt buiten het bestek van dit onderzoek.

[1330] Zie, bijvoorbeeld, Von Falkenhausen, *Untersuchungen*; Brandileone, *Il diritto* and Cavallo, *La circulazione*.

[1331] *TTh*, vol. I, p. 446, regels 21-25, no CXIX. Zie ook Hendrickx, *Thesmoi*, p. 29. Hetzelfde wordt herhaald in het verdrag van oktober 1205 in artikel 7. Zie *TTh*, vol. I, p. 573, regels 14-18, no CLX en Hendrickx, *Thesmoi*, p. 39.

APPENDIX

1. Translation of the legal part of the chrysobull of Alexios III Angelos in 1198 (Reg. 1647)[1332]

From the edition of Pozza and Ravegnani, *I trattati*, p. 132, line 15 – p. 137, line 8, no 11:

Insuper, quoniam quidem iam dicti prudentissimi legati Venetie, Petrus Michael et Octavianus Quirinus, retulerunt imperio meo, quia ex non scripto usque et nunc causis inductis ab aliquo Grecorum contra aliquem Veneticum, a legato Venetie per tempora in magna urbe existente iudicatis et solutis, interdum quidem Grecorum quibusdam civilium iudicum vel in palatio imperii mei custodientium accedentes, adtractationes gravissimas fidelissimis imperio meo Veneticis superinducunt, et in carcerem recrudi eos faciunt, et omnibus aliis dedecoribus subici; deprecati sunt igitur imperium meum, ut et tale capitulum per presens chrysobolum verbum imperii mei solvatur, et concedatur eis, quod Greco quidem contra Veneticum agente in peccuniali causa, a legato Venetie, qui tunc in magna erit urbe, iudicium fieri debeat; Venetico vero contra Grecum similiter agente, si quidem, qui tunc fuerit cancellarius vie, in magna urbe inerit, apud eum causa moverit et iudicari debeat; si vero forte ipse in magna urbe non fuerit, apud tunc magnum logariastam cause iudicentur;

Moreover because indeed the already mentioned most prudent envoys of Venice, Petro Michael and Octaviano Quirino, have told my Majesty, that because until the present day it sometimes happens that in cases brought by a Byzantine against a Venetian, in accordance with an unwritten rule, which have already been judged and solved by the Venetian representative (*legatus*) who at that time is serving in the great city [Constantinople], some Byzantines approaching some of civil (Byzantine) judges or the guards in the palace of my Majesty, lay very serious accusations against the Venetians, who are most loyal to my Majesty, and thus effect that they are put in prison and are treated with all other kinds of dishonour; they have asked therefore my Majesty that this issue is also solved by the present chrysobull of my Majesty and that it is granted to them that, when a Byzantine sues a Venetian in a civil case, the case must be judged by the legate of Venice, who is at that time in the great city [Constantinople]; when, however, a Venetian sues a Byzantine likewise, if the person who at that time is the *logothetes tou dromou* is present in the great city [Constantinople], he [the Venetian] will bring the case before him and it has to be judged by him [the *logothetes*]; if, however, he himself happens not to be in the great city, the case will be judged before the person who at that time is the *megas logariastes*; my

[1332] For a detailed analysis of all these legal provisions and explanations on issues of the translation, see chapter II,7.

graviter quidem imperium meum talem eorum accepit et petitionem et ex toto ad eius complementum annuere nolebat. Sed quoniam multa instancia predeclarati legati ad imperium meum fecerunt, et ne talis eorum deprecatio non exaudiretur, magnis precibus supplicaverunt, ut hoc solo capitulo separare Venetiam a Romania valente, imperium meum puram fidem et bonam circa Romaniam Venetie voluntatem non ignorans, insuper et predeclaratorum prudentissimorum Venetie legatorum, Petri Michaelis et Octaviani Quirini, magne instantie ac supplicationi inflexum, precepit per presens chrysobolum verbum, quod Greco quidem contra Veneticum in pecuniaria causa agente, legatus, qui per tempora in magna urbe erit, tale iudicium perscrutetur; et scripto quidem demonstrato a greco tavulario composito, certificato etiam ab aliquo iudicum veli et epi tu yppodromi vel symiomate alicuius predictorum iudicum, aut et ab aliquo pontificum vel ab aliquot tavulario vel iudice, per quem apud Veneticos dignum fide habeatur, secundum huiusmodi scripti comprehensionem decisionem cause superinduci.

Sic etiam quod per qualecumque tempus a nobilissimo et imperio meo fidelissimo protosevasto et duce Venetie ad magnam urbem mittetur legatus, et qui sub eo iudices, statim post in magnam urbem eorum introitum ostendi debeant ei, qui tunc erit vie cancellarius, aut si ipse tunc cancellarius tunc in Constantinopoli non fuerit, ei, qui tunc erit magnus logariasta; et ab eo debeat mitti ad ecclesiam Veneticorum per magnum intepretem, vel si ipse non fuerit, per aliquem curie aliorum interpetem, et per unum eorum, qui cancellarie scriptis deserviunt, aut per unum secreticorum magni logariaste, si talis gramaticus tunc presens non fuerit; et in medio ipsius Veneticorum ecclesie in audientiam totius plenitudinis Veneticorum tunc in Constantinopoli existentium debeant iurare, quod recte et

Majesty has certainly taken this request seriously, but was not prepared to comply with it completely. But because the aforementioned legates have shown great insistence to my Majesty, and implored by urgent entreaties not to remain deaf to their request, saying that this single issue would suffice to separate Romania from Venice, my Majesty, not ignorant of the pure loyalty and good will towards Romania of Venice and also of the aforementioned most prudent envoys of Venice, Petro Michael and Octaviano Quirino, has bent to their great insistence and plea and has ordered by the present chrysobull that, when a Byzantine sues a Venetian in a civil case, the person who is at that time the legate in the great city [Constantinople] will investigate this case; and when a written document has been shown composed by a Byzantine notary, and also certified by one of the judges of the *velum* and of the *hippodrome* or by a decision by one of these judges or by one of the bishops or by a notary or a judge whom the Venetians trust, according to the contents of this writing a decision of the case will be taken.

Also that, if at any time a legate is sent to the great city [Constantinople] by the most noble *protosebastos* doge of Venice who is most loyal to my Majesty, he and the judges who serve under him immediately after their entrance in Constantinople have to present themselves to that person, who at that time is the *cancellarius vie* [*logothetes tou dromou*], or, in case this *cancellarius* is not then present in Constantinople, to that person that at that time is the *megas logariastes*; he must then be sent by him to the church of the Venetians accompanied by the high interpreter, or in case he himself should not be there, accompanied by another court interpreter, or by one of those who serve at the office of the *cancellarius* or by one of the secretaries of the *megas logariastes*, if such a *grammaticus* is not present at that

iuste et sine susceptione personarum vel alicuius doni dati vel promissi iudicia, que inter Grecos actores et Veneticos reos erunt, facient, nec aliquod adiutorium Veneticis tribuent, sed equa lance utriusque causam tam Greci quam et Venetici discernent et iudicabunt.

time; and in the middle of that church of the Venetians, for the whole body of the Venetians who are then present in Constantinople to, they have to swear, that they will dispense justice correctly and justly and without personal preference or any gift or promise in cases between Byzantine plaintiffs and Venetian defendants, and that they will not give any preferential treatment to the Venetians, but that they will settle and decide equitably the case of both the Byzantine and the Venetian.

Venetico reo donare debente Greco actori calumpnie sacramentum, ipso Venetico solo iurare debente decisionis cause sacramentum, ita, quod integre decisionis cause sacramentum Veneticus Greco possit referre, si vult, prout et de hoc prudentissimi legati Veneticorum meum deprecati sunt imperium. Et hec quidem, Greco contra Veneticum agente.

The Venetian defendant has to give to the Byzantine plaintiff the *sacramentum calumniae*, whereas only the Venetian defendant himself has to swear the decisive oath [*sacramentum decisionis causa*], so that the Venetian can justly request from the Byzantine that he take the desicive oath [*decisionis causa sacramentum*], if he wants, according to the wish that the most skilled representatives of Venice have directed at my Majesty. And this indeed [is ordered] when a Byzantine sues a Venetian.

Si vero Veneticus contra Grecum egerit, apud tunc cancellarium vie, vel eo a magna urbe absente, apud magnum logariastam querelam debeat proponere, et scripto quidem fide digno existente actori Venetico, quamvis a greco tavulario aut iudice veli et epi tu yppodromi, aut a pontifice vel Venetico tabulario vel iudice sit compositum, secundum hoc utique causa decidetur. Scripto vero actori non existente, secundum ipsum ius et actor Veneticus iudicabitur, et donabitur quidem et ea ab eo Greco calumpnie sacramentum. Iurabitur autem et ab ipso Greco ipsum decisionis cause sacramentum ita, quod quidem Venetis possit referre e contra. Et secundum presentem formam presentis scripti huius chrysobuli imperii mei, ex nunc et deinceps iudicia peccuniaria inter Veneticis et Grecos decidantur.

When however, a Venetian sues a Byzantine, the Venetian has to raise his complaint before the current *logothetes tou dromou*, or, if he is absent from the great city [Constantinople], before the *megas logariastes,* and when a document exists, which is considered trustworthy by the Venetian plaintiff, even if it is composed by a Byzantine notary or a judge of the *velum* and of the *hippodrome*, or a bishop or a Venetian notary or judge, the case will be settled on the basis of this document. If, however, a written act does not exist for the [Venetian] plaintiff, the latter will be judged according to the same law, and he will be given by the Byzantine defendant the *calumniae sacramentum*. And the Byzantine defendant himself takes the decisive oath [*decisionis cause sacramentum*], in such a way that he can give it back to the Venetians and vice versa. And according to this form of the

present text of this chrysobull of my Majesty, from now on and in the future civil justice will be administered between Venetians and Byzantines.

Preterea quidem, si de seditione vel repugnatione inter Grecum et Veneticum existente moveatur causa, magna quidem existente seditione et ad multitudinem deventa et ad homicidium forte perveniente aut magnas plagas, tunc cancellarius vie, vel eo a magna urbe absente, tunc praeses in palatio Vlachernarum primiceriorum et stractiotarum huiusmodi perscrutabitur causam, et, ut ab eo cognoscetur solvet et ulciscetur; parva vero et ad unum vel duos deducta, si quidem vulneratus plagam mediocrem sustinens aut iniuriam Veneticus fuerit, apud tunc cancellarium vie, vel eo a magna urbe absente, apud tunc magnum logariastam querelam proponat, et secundum leges vindictam habebit. Si vero Grecus fuerit idiota quidem, et non ex senatus consulto aut de clarioribus hominibus curie imperii mei consistens, apud legatum Veneticorum et sub eo iudices de iniuria et dedecore movebunt causam, et ab istis suscipiet vindictam. Diligenter enim imperium meum confidit, quod super huiusmodi capitulis sacramenta pro iusticia intervenientia Venetici, quibus iudicium est comissum, non despicient, immo similiter et in huiusmodi causis iusticiam custodient, quemadmodum et in peccuniariis, et non tantum honorem vel dedecus sive proficuum vel dampnum Veneticorum curabunt, quantum eorum sacramenta, que ab eis pro iusticia fient, in omnibus bene custodire et observare.

Moreover, if there is a case between a Byzantine and a Venetian due to a fight or an opposition, if it is a strong fight that escalates and ends perhaps in homicide or severe wounds, the logothetes tou dromou or, if he is absent from the great city [Constantinople], the head of the *primicerioi* and the *stractiotarioi* [*stratiotarioi*] in the *Blachernae* palace, will examine a case of this kind, and he will solve it and punish according to his findings; if it is a minor disturbance including just one or two people, if it is a Venetian who has suffered a mild wound or injury, he will bring the complaint before the *logothetes tou dromou* of that time, or if he is not present in the great city [Constantinople], before the *megas logariastes* and he [the Venetian accuser] will receive retribution according to the laws. If however, there is a Byzantine common person who does not belong to the senate nor to the splendid men who form the court of my Majesty, he will bring the case for injury and dishonour before the representative of the Venetians and his judges, and he will receive retribution from them. My Majesty is earnestly confident that the Venetians, to whom judgment is entrusted, will not disregard the oaths regarding such issues that they have taken in the interest of justice; on the contrary, they will similarly safeguard justice in cases of this kind too, just as they also do in civil cases, and they will not so much pay attention to honour or disgrace or advantage or damage of the Venetians, as keep and observe their oaths well in all respects, which will be taken by them in the interest of justice.

Ne autem longa sequetur mora in iudiciis inter Grecos et Veneticos futuris, nec libelli dies nec interdictorum usque in viginti vel triginta, prout comuniter secundum leges tenetur, connumerari meo

In order to avoid long delay in future trials between Byzantines and Venetians, it is my imperial wish that there shall not be counted up to twenty or thirty days of neither *libellus* nor of *interdicta*, as is

placet imperio, sed secundum novam constitutionem sempiterne memorie imperatoris et dilecti patrui imperii mei, domini Manuhelis Comnani, factam de iudiciis, que inter extraneos et indigenas cives conversantur.
Insuper et aliam petitionem sepius declaratam prudentissimi legati ad meum fecerunt imperium iustissimam et meo acceptabilem imperio. Pecierunt enim, ut Venetico in aliqua regione imperii mei moriente nullam practori terre ad bona defuncti Venetici fieri accessionem, immo secundum placitum Venetici defuncti eius dispensentur res vel ab eius fidecomissariis, si testamentorie contingit eum obiisse, vel ab iis qui reperirentur tunc ibi Veneticis. Annuit igitur imperium meum et tali eorum peticioni, et per presens scriptum auro signatum chrysobolum verbum iubet, nulli in tota Romania aliquod dominio exercenti, sive practor provincie sit, sive villicus personalis vel monasterii aut ipsorum intimorum cognatorum imperii mei, et ipsorum etiam felicissimorum sevastocratorum et cesarum vel dilectorum liberorum imperii mei aut ipsius dilectissime mee auguste, licere ullo modo in Veneticorum defunctorum res manus inmittere, et aliquid ex eis usque a unum obolum accipere, sed intacta omnino custodire tam a manu dimosii quam a manu personarum et monasteriorum, potestati defuncti vel procuratorum eius sive ab intestate heredum custodita.

Scire autem oportet, ille, qui ausus fuerit contra presens preceptum imperii mei facere, quod in quadruplum reddet ablatum, et per competentem punietur correptionem, tunc vie logotheta existente seu magno logariasta talis capituli vindicte superinvigilare debente et secundum presens preceptum imperii mei vindictam facere. Omnia igitur, que per presentis

generally observed according to the laws, but trials between foreign and native citizens must be conducted according to this new constitution of the emperor of everlasting memory and beloved uncle of my Majesty, *kyr* Manuel Komnenos.
Moreover, the most skilled representatives have also frequently made another request, which is most just and agreeable to my Majesty. They requested in fact that, when a Venetian dies in a place of my Majesty, the fiscal officer will have no access to the estate of the deceased Venetian; on the contrary the estate will be dealt with in accordance with the wish of the deceased Venetian, either by his fideicommissaries, if he happens to have died with a testament, or [if he has died intestate] by the Venetians who live there at that time. My Majesty therefore agrees to this request of theirs, and orders by the present document and gold-sealed chrysobull: to no one who has any authority in the whole of Romania, be he a provincial officer, or an overseer in the service of a person or of monasteries or of persons intimately connected to my own Majesty, or even of the most fortunate *sebastocrators* and *caesars* or of the beloved children of my Majesty or of my most beloved (wife the) *augusta*, it is allowed in any way to have dealings with the estate of deceased Venetians, and to accept anything from it, even one penny (*obolon*), but they should keep [everything] wholly intact, neither the public sector nor a person or a monastery may touch it and it will be kept for the power of the deceased or of his representatives or of his *intestate* heirs.
It should be known: he, who dares to act against the present order of my Majesty will return fourfold what has been taken away, and will be punished by the applicable punishment, and in that case, the existing *logothetes tou dromou* or the *megas logariastes* has to supervise the retribution of this matter and to dispense retribution according to this present order

chrysoboli verbi ab imperio meo corroborato, ex gratia donata generi Veneticorum imperio meo fidelissimorum, incorrupte et immutate custodita erunt, quousque et Venetici ad imperium meum et Romaniam fidem secundum ea, que ab eis pacta et iurata sunt in supraordinato scripto prudentissimorum legatorum declarata, immutata et incorrupta custodierint. Ad hoc enim et presens chrysobolum verbum imperii mei fidelissimis imperio meo traditum est Veneticis, firmum et inviolatum habere debens.

of my Majesty. Everything therefore, that has been confirmed by the present chrysobull by my Majesty, from the donations in favour of the Venetian people, who are most faithful to my Majesty, will be observed justly and unchanged, as long as also the Venetians will keep unchanged and justly their word towards my Majesty and Romania according to what has been agreed and sworn by them and has been declared in the above text of the most skilled representatives. And therefore the present chrysobull of my Majesty is delivered to the Venetians who are loyal to my Majesty and has to remain valid and inviolate.

2. Table of the examined Byzantine Imperial acts directed at Venice, Pisa and Genoa in the 10th, 11th and 12th centuries[1333]

Year	Nr. Reg.	Emperor(s)	Type of act[1334]	Italian city
992	781	Basil II and Constantine VIII	Chrysobull	Venice
1082	1081	Alexios I	Chrysobull	Venice
1111	1255	Alexios I	Chrysobull	Pisa
1126	1304	John II Komnenos	Chrysobull	Venice
1147	1365	Manuel I Komnenos	Chrysobull	Venice
1148	1373	Manuel I Komnenos	Chrysobull	Venice
1169	1488	Manuel I Komnenos	Chrysobull	Genoa
1170	1497	Manuel I Komnenos	Chrysobull	Genoa
1170	1499 [1400]	Manuel I Komnenos	Chrysobull	Pisa
1170	1498	Manuel I Komnenos	Chrysobull	Genoa
1187	1576	Isaac II Angelos	Chrysobull	Venice
1187	1577	Isaac II Angelos	Chrysobull	Venice
1187	1578	Isaac II Angelos	Chrysobull	Venice
1188	1582	Isaac II Angelos	Letter	Genoa[1335]
1189	1590	Isaac II Angelos	Chrysobull	Venice
1192	1606	Isaac II Angelos	Letter	Genoa
1192	1607	Isaac II Angelos	Chrysobull	Pisa
1192	1609	Isaac II Angelos	Chrysobull	Genoa
1192	1610	Isaac II Angelos	Letter	Genoa
1192	1612	Isaac II Angelos	Letter	Genoa
1193	1616	Isaac II Angelos	Chrysobull	Genoa
1194	1618	Isaac II Angelos	Letter	Pisa
1198	1647	Alexios III Angelos	Chrysobull	Venice
1199	1649	Alexios III Angelos	Letter	Genoa
1199	1651	Alexios III Angelos	Letter	Pisa[1336]
1201	1660	Alexios III Angelos	Letter	Genoa[1337]
1201	1661a [1663]	Alexios III Angelos	Decree	Genoa[1338]

[1333] Acts for which there are only indirect references have not been included

[1334] No distinction has been made between *chrysobullum verbum* and *chrysobullum sigilion*. The distinction in this table refers only to whether the act is a privilege act (chrysobull), a letter or a decree.

[1335] This letter is addressed to the Genoese Baldovino Guercio.

[1336] This letter is addressed to the Pisan envoys Uguccione and Modano.

[1337] This letter is addressed to the Genoese knight Gulielmo.

[1338] This decree (πρόσταγμα) refers to the concessions of the Genoese in Constantinople. It is addressed to three Byzantine officials who have to deliver these concessions to the Genoese representative Ottobono Dellacroce.

BIBLIOGRAPHY

Primary Sources

ACO, conc. Const. tertium	R. Riedinger, *Acta Conciliorum Oecumenicorum, Series Secunda*, vol. Secundum, *Concilium Universale Constantinopolitanum tertium*, Pars 1-2, Berlin, De Gruyter, 1990-1992
Actes d' Esphigménou	J. Lefort, *Actes d' Esphigménou*, Paris 1973
Actes d' Iviron	J. Lefort, N. Oikonomidès, D. Papachryssanthou and H. Métrévéli, *Actes d' Iviron, des origines au milieu du XIe siècle*, Paris 1985
Actes de Chilandar	M. Živojinović, V. Kravari and Ch. Giros, *Actes de Chilandar, des origines à 1319*, Paris 1998
Actes de Dionysiou	N. Oikonomidès, *Actes de Dionysiou*, Paris 1968
Actes de Kastamonitou	N. Oikonomidès, *Actes de Kastamonitou*, Paris 1978
Actes de Kutlumus	P. Lemerle, *Actes de Kutlumus*, Paris 1945
Actes de Lavra	P. Lemerle, A. Guillou, N. Svoronos and D. Papachryssanthou, *Actes de Lavra*, I, *Des origines à 1204*, Paris 1970
Actes de Saint-Pantéléèmôn	G. Dagron, P. Lemerle and S. Ćirković, *Actes de Saint-Pantéléèmôn*, Paris 1982
Actes de Xénophon	D. Papachryssanthou, *Actes de Xénophon*, Paris 1986
Actes du Pantocrator	V. Kravari, *Actes du Pantocrator*, Paris 1991
Actes du Prôtaton	D. Papachryssanthou, *Actes du Prôtaton*, Paris 1975
AJC	F.H. Blume (ed. T. Kearly), *Annotated Justinian Code*, 2008 http://uwacadweb.uwyo.edu/blume&justinian. I use this translation of the Code because it is provided with notes and is easily accessible.
An.Komn.	*Annae Comnenae, Alexias,* Corpus Fontium Historiae Byzantinae, Volumen XL/1, Series Berolinensis, recensuerunt D. R. Reinsch et Ath. Kambylis, de Gruyter, 2001
Ashburner, *Rhodian Sea-Law*	W. Ashburner, *The Rhodian Sea-Law*, Oxford 1909 (repr. Scientia Aalen 1976)

Attal.	Michael Attaleiates, *Historia*, ed. I. Bekker, Bonn 1853
BT and / or BS	H.J. Scheltema, D. Holwerda and N. van der Wal, *Basilica*, Groningen 1953-1988: A (text) I-VIII, B (scholia) I-IX
Borsari, *Il crisobullo*	S. Borsari, "Il crisobullo di Alessio I per Venezia" in *Annali dell'Istituto Italiano per gli Studi Storici 2* (1969/70), pp. 111-131
Burgmann, *Ecloga*	L. Burgmann, *Ecloga, das Gesetzbuch Leons III und Konstantinos' V, Forschungen zur Byzantinischen Rechtsgeschichte* 10, Frankfurt am Main 1983
Cod. Dipl. Genova	"Codice Diplomatico della Repubblica di Genova dal MCLXIIII al MCLXXXXX" in *Fonti per la storia d' Italia, Istituto Storico Italiano* a cura di Cesare Imperiale di Sant'Angelo, vol. I (Roma 1936), vol. II (Roma 1938) and vol. III (Roma 1942-XXI)
D'Amia, *Diritto*	A. D' Amia, *Diritto e sentenze di Pisa ai primordi del rinascimento giuridico*, Pisa 1960
Ecloga Basilicorum	L. Burgmann, *Ecloga Basilicorum, Forschungen zur byzantinischen Rechtsgeschichte* 15, Frankfurt am Main 1988
Gaius	*The Institutes of Gaius*, transl. by W.M. Gordon and O.F. Robinson with the Latin text of Seckel and Kuebler, Duckworth 1988
Heimbach, *Hexabiblos*	G.E. Heimbach, *Const. Harmenopouli Manuale legum sive Hexabiblos*, Leipzig 1851 (repr. Aalen 1969)
Koder, *Das Eparchenbuch*	J. Koder, *Das Eparchenbuch Leons des Weisen*, Wien 1991
Kinn.	A. Meineke, *Ioannis Cinnami Epitome rerum ab Ioanne et Alexio Comnenis gestarum*, *CSHB*, Bonn 1836
MGH, Friderici I. Diplomata	*Monumenta Germaniae Historica, Diplomata Regum et Imperatorum Germaniae Friderici I. Diplomata 1181-1190*, bearbeitet von H. Appelt (unter Mitwirkung con R.M. Herkenrath, W. Koch und B. Pferschy), 10 Band, vierter Teil, Hannover 1990
Lanfranchi, *Famiglia Zusto*	*Famiglia Zusto*, a cura di Luigi Lanfranchi, Venezia 1955

Lanfranchi, *SGM*	*San Giorgio Maggiore*, ed. Lanfranchi, Venezia 1968, vol. II (documenti 982-1159) and vol. III (documenti 1160-1199 e notizie de documenti)
Liutprandi	P. Chiesa, *Liutprandi Cremonensis Antapodosis, Homelia paschalis, Historia Ottonis, Relatio de legatione Constantinopolitana,* Corpus Christianorum, Continuatio Mediaevalis, Turnholti Brepols 1998
MM	F. Miklosich – J. Müller*, Acta et Diplomata Graeca Medii Aevi*, vols. 3, Wien 1865, Repr. Aalen 1968
Morozzo and Lombardo, *Documenti*	R. Morozzo della Rocca and A. Lombardo, *Documenti del commercio Veneziano nei secoli XI-XIII*, published in Regesta Chartarum Italiae, 2 vols., Rome and Turin 1940
Müller, *Documenti*	G. Müller, *Documenti sulle Relationi delle citta Toscane coll' Oriente Christiano e coi Turchi*, Firenze 1879 (reprinted 1966)
Lexikon Hexabiblos aucta	M. Th. Fögen, "Das Lexikon zur Hexabiblos aucta" in *FM VIII, Lexica Iuridica Byzantina*, (ed. L. Burgmann, M. Th. Fögen, R. Meijering and B.H. Stolte), Frankfurt 1990, pp. 153-214
Lombardo and Morozzo, *Nuovi*	A. Lombardo and R. Morozzo della Rocca, Nuovi Documenti del commercio Veneziano dei sec. XI-XIII, Deputazione di storia patria per le Venezie, Venezia 1953
Nik.Chon.	*Choniatae Nicetae, Historia*, Corpus Fontium Historiae Byzantinae, Volumen XI/1, Series Berolinensis, recens. I. A. van Dieten, de Gruyter, 1975
Nuova Seria	G. Bertolotto and A. Sanguinetti, *Nuova seria di documenti sulle relationi di Genova coll' impero bizantino, Atti della Società di Ligure di storia patria* 28 (1898), Appendice Roma 1902
Nystazopoulou, *Patmos*	Μ. Νυσταζοπούλου - Πελεκίδου, *Ἔγγραφα Πάτμου, 2. Δημοσίων Λειτουργῶν*, Ἀθῆναι 1980 (in Greek)
Pertusi, *Venezia e Bisanzio (Saggi)*	A. Pertusi "Venezia e Bisanzio nel secolo XI", in: *La Venezia del Mille,* Florenz 1965, 117-160, repr. in: A. Pertusi, *Saggi Veneto-Bizantini*, (a cura di Parente G.B.), Florenz 1990, pp. 67-107. I have used the reprinted edition.

Pitsakis, *Hexabiblos*	K. Πιτσάκη, Κωνσταντίνου Ἁρμενοπούλου, *Πρόχειρον Νόμων ἢ Ἑξάβιβλος*, Αθήνα 1971 (in Greek)
Pozza and Ravegnani, *I trattati*	M. Pozza and G. Ravegnani, *I trattati con Bisanzio 992-1198*, Venice 1993
Skyl.	Ioannes Skylitzes: *Synopsis historiarum*, ed. I. Thurn, Berlin – New York 1973
RhP	Rhalles and Potles, *Syntagma*, Athens, 6 vols., 1852-1859, (repr. Athens 1966)
TTh	G.L.Fr. Tafel – G.M. Thomas, *Urkunden zur älteren Handels- u. Staatsgeschichte der Republik Venedig,* 3 vols., Wien 1856
Theoph.	*Theophanes, Chronographia*, ed. C. de Boor, 2 vols., Leipzig 1883-85; repr. Hildersheim 1963
Theophili Paraphrasis	*Theophili Antecessoris Paraphrasis Institutionum* (eds. J.H.A. Lokin, R. Meijering, B.H. Stolte, N. van der Wal with a translation by A.F. Murison), Groningen 2010
Troianos, *Neares*	Σπ. Τρωιάνου, *Οι νεαρές του Λέοντος ΣΤ' του Σοφού*, Αθήνα 2007 (in Greek)
Zepos, *JGR*	J. and P. Zepos, *Jus Graecoromanum*, 8 vols., Athens 1931 (repr. Aalen 1962)
Vranousi, *Patmos*	Ε. Βρανούση, *Ἔγγραφα Πάτμου, Αὐτοκρατορικά*, Ἀθήνα 1980 (in Greek)
Watson, *Digest*	A. Watson e.a., The Digest of Justinian, transl. of Mommsen, ed. maior, 4 vols., Philadelphia 1985

Secondary Literature

Ahrweiler, *Fonctionnaires*	H. Ahrweiler, "Fonctionnaires et bureau maritimes à Byzance" in *Revue des études byzantines 19* (1961), pp. 239-52
Antoniadis-Bibicou, *Recherches*	H. Antoniadis – Bibicou, *Recherches sur les douanes à Byzance*, Paris 1963
Berger, *Dictionary*	A. Berger, *Encyclopedic dictionary of Roman law*, Philadelphia 1953
Berman, *Law and Revolution*	H.J. Berman, *Law and Revolution, The Formation of the Western Legal Tradition*, Harvard University Press 1983
Besta and Predelli, *Gli statuti*	E. Besta and R. Predelli, *Gli statuti civili di Venezia*, Nuovo Archivio Veneto, Venice 1901

Besta, *Il diritto*	Besta, *Il diritto e le leggi civili di Venezia fino al dogado di Enrico Dandolo*, Venezia 1900
Black's Law Dictionary	Black's Law Dictionary, 8th edition, (editor-in-chief Br. Garner), Thomson West 2004
Borsari, *Il crisobullo*	See primary sources
Borsari, *Venezia e Bisanzio*	S. Borsari, *Venezia e Bisanzio nel XII secolo: I rapporti economici,* Deputazione di storia patria per le Venezie, Miscellanea di studi e memorie 26 (1988) Venice
Borsari, *Il commercio Veneziano*	S. Borsari, "Il commercio Veneziano nell' impero Bizantino nel XII sec." in *Rivista Storica Italiana* vol. 76 (1964), pp. 982-1011
Brandileone, *La traditio*	F. Brandileone, "La traditio per chartam nel diritto bizantino" in *Scritti di Storia del diritto privato Italiano*, (a cura di G. Ermini) II, Bologna 1931-IX, pp. 15-36
Brandileone, *Il diritto*	F. Brandileone, "Il diritto Greco-Romano nell' Italia Meridionale sotto la dominazione Normana (1)" in *Archivio "Filippo Serafini" 36* (1886), pp. 62-101
Brown, *Venetian Quarter*	H. F. Brown, "The Venetians and the Venetian Quarter in Constantinople to the close of the Twelfth century" in *Journal of Hellenic Studies*, vol. XL (1920), pp. 68-88
Brunner, *Zur Rechtsgeschichte*	H. Brunner, *Zur Rechtsgeschichte der römischen und germanischen Urkunde*, Berlin 1880 (Aalen Scientia Verlag repr. 1961)
Burgmann, *Chrysobull*	L. Burgmann "Chrysobull gleich Privileg? Beobachtungen zur Funktion einer byzantinischen Urkundenform" in *Das Privileg im europäischen Vergleich*, vol. I, (ed. B. Dölemeyer and H. Mohnhaupt, 1997), pp. 69-92
Burgmann, *Rechtsprechung*	L. Burgmann, "Zur Organisation der Rechtsprechung in Byzanz" in *La giustizia nell' alto medioevo, secoli (IX – XI)*, Spoleto 1997, pp. 905-930
Burril, *New Law Dictionary*	A. M. Burrill, *A New Law Dictionary and Glossary*, 2 vols., New York 1850-1851, repr. 1998
Caenegem, *Historical Introduction*	R.C. van Caenegem, *An Historical Introduction to Private Law*, Cambridge University Press 1992 (repr. 1996)

Calasso, *Medio Evo*	Fr. Calasso, *Medio Evo del diritto*, Milano 1954
Cavallo, *La circolazione*	G. Cavallo, "La circolazione di testi giuridici in lingua Greca nel Mezzogiorno Medievale" in *Scuole diritto e societa nel Mezzogiorno Medievale d' Italia* a cura di M. Bellomo, vol. II, Catania, Tringale editore, 1987, pp. 87-136
Charanis, *Monastic Properties*	P. Charanis, "Monastic Properties and the State in the Byzantine Empire", in *DOP*, vol. 4 (1948), pp. 53-118
Christophilopoulos, *Eparchikon*	Αν. Χριστοφιλόπουλος, *Τό 'Επαρχικόν Βιβλίον Λέοντος τοῦ Σοφοῦ,* Ἀθῆναι 1935 (repr. Θεσσαλονίκη 2000) (in Greek)
Christophilopoulou, *Politeuma*	Αικ. Χριστοφιλοπούλου, *Το πολίτευμα και οι θεσμοί της Βυζαντινής Αυτοκρατορίας 324- 1204*, Αθήνα 2004 (in Greek)
Christophilopoulou, *Byzantini Historia*	Αικ. Χριστοφιλοπούλου, *Βυζαντινή Ιστορία, Γ1, 1081-1204*, Αθήνα 2001 (in Greek)
Cimma, *Non Numerata*	M.R. Cimma, *De non numerata pecunia*, Milano 1984
Classen, *Studium*	P. Classen, "Studium und Geselschaft im Mittelalter" in *Monumenta Germaniae Historica Schriften*, Band 29, Stuttgart 1983
Classen, *Burgundio*	P. Classen, *Burgundio von Pisa, Richter - Gesander - Übersetzer*, Heidelberg 1974
Condanari-Michler, *Collegantia*	S. Condanari - Michler, *Zur frühvenezianischen Collegantia*, München 1987
Constable, *Housing*	O. R. Constable, *Housing the stranger in the Mediterranean World*, Cambridge University Press 2003
Constable, *Fondaco*	O.R. Constable, "Funduq, Fondaco, and Khān in the Wake of Christian Commerce and Crusade" in *The Crusades from the Perspective of Byzantium and the Muslim World* (ed. A. Laiou and R.O. Mottahedeh), 2001, pp. 145-156
Constable, *Jettison*	O. R. Constable, "The problem of jettison in medieval Mediterranean maritime law" in *Journal of Medieval History*, 20 (1994), pp. 207-220
Cortese, *Il diritto*	Cortese E., *Il diritto nella storia medievale*, vol. I (l' alto medioevo) and vol. II (il basso medioevo), Roma 1998

Danstrup, *Indirect Taxation*	J. Danstrup, "Indirect Taxation at Byzantium" in *Classica et Mediaevalia*, VIII (1946), pp. 139-67
Danstrup, *Manuel*	J. Danstrup, "Manuel I's coup against Genoa and Venice in the light of Byzantine commercial policy", in *Classica et Mediaevalia, X* (1948), pp. 195-219
Danstrup, *State*	J. Danstrup, "The state and landed property in Byzantium to c. 1250" in *Classica et Mediaevalia, X*VIII (1946), pp. 222-262
Darrouzès, *Tornikès*	J. Darrouzès, *Georges et Dèmètrios Tornikès, Lettres et discourse*, Paris 1970
Day, *Genoa's Response*	G. Day, *Genoa's Response to Byzantium 1155-1204*, Urbana - Chicago 1988
Day, *Manuel*	G. Day, "Manuel and the Genoese: A Reppraisal of Byzantine Commercial Policy in the Late Twelfth Century" in *The Journal of Economic History*, vol. 37, no 2 (1977), pp. 289-301
Dölger, *Regesten*	F. Dölger, *Corpus der griechischen Urkunden des Mittellalters und der neueren Zeit. Reihe A: Regesten. Abt. I.Regesten der Kaiserurkunden des oströmisches Reiches von 565-1453. 2. Teil: Regesten von 1025-1204* (2nd ed. by P.Wirth), München 1995
Dölger, *Regesten, 1. Teil*	F. Dölger, *Corpus der griechischen Urkunden des Mittellalters und der neueren Zeit. Reihe A: Regesten. Abt. I. Regesten der Kaiserurkunden des oströmisches Reiches von 565-1453. 1. Teil: Regesten von 565-1025*, München-Berlin 1924 (repr. Hildesheim 1976)
Dölger and Karayannopulos, *Urkundenlehre*	F. Dölger and I. Karayannopulos *yzantinische Urkundenlehre*, Die Kaiserurkunden, 1968
Dumler, *Venedig*	H. Dumler, *Venedig und die Dogen*, Düsseldorf-Zürich, 2001
EHB	*The Economic History of Byzantium, From the Seventh through the Fifteenth Century*, 3 vols. (editor-in chief A.E. Laiou), Dumbarton Oaks, Washington D.C. 2002
Epstein, *Genoa*	St. Epstein, *Genoa and the Genoese 958-1528*, The University of North Carolina Press, 1996
Favreau-Lilie, *Die Italiener*	M.L. Favreau – Lilie, *Die Italiener im Heiligen Land*, Amsterdam Hakkert 1989

Ferluga, *La ligesse*	J. Ferluga, "La ligesse dans l'empire byzantin" in *Zbornik Radova Vizantinoloskog Instituta* 7 (1961), pp. 97-123
Franklin and Shepard, *The Emergence of Rus*	S. Franklin and J. Shepard, *The Emergence of Rus: 750-1200*, Longman 1996
Ganshof, *Feudalism*	F. L. Ganshof, *Feudalism*, London 1996
Ganshof, *Histoire*	F.L .Ganshof, *Histoire des Relations Internationales, Le Moyen Âge*, Paris 1953
Gastgeber, *Neue Ergebnisse*	Chr. Gastgeber, "Die Lateinische "Übersetzungsabteilung" der byzantinischen Kaiserkanzlei unter den Komnenen und Angeloi, Neue Ergebnisse zur Arbeit in der byzantinischen Kaiserkanzlei" in *Byzance et le monde extérieur, Contacts, relations, échanges*, (sous la direction de M. Balard, Él. Malamut, J.-M. Spieser) Sorbonne 2005, pp. 105-122
Gastgeber, *Übersetzungsabteilung*	*Die Lateinische "Übersetzungsabteilung" der Byzantinischen Kaiserkanzlei unter den Komnenen und Angeloi*, 3 vols., (PhD), Wien 2001
Goutzioukostas, *Aponomi*	A. Goutzioukostas, *Η απονομή δικαιοσύνης στο Βυζάντιο (9ος – 12ος αιώνες), Τα κοσμικά δικαιοδοτικά όργανα και τα δικαστήρια της πρωτεύουσας*., (PhD), Κέντρο Βυζαντινών Ερευνών, Θεσσαλονίκη, 2004 (in Greek)
Grumel, *Titulature*	V. Grumel, "Titulature de métropolites, II. Métropolites hypertimes, Memorial Louis Petit", in: *Mélanges d' Histoire et d' archeologie Byzantines*, Archives de l' orient chrétien, I, Institut Français d' études Byzantines, 1948
Guilland, *Logothètes*	R. Guilland, "Les Logothètes" in *Revue des Études Byzantines*, 29 (1971) pp. 5-115
Hamilton, *Contra Patarenos*	B. Hamilton, J. Hamilton and S. Hamilton, *Hugh Eteriano: Contra Patarenos*, Brill Leiden 2004
Hazeltine, *Roman Law and Canon Law*	H.D. Hazeltine, "Roman law and Canon law in the Middle Ages" in *The Cambridge Medieval History,* vol. V, 1926, pp. 697-764
Heinemeyer, *Die Verträge*	W. Heinemeyer, "Die Verträge zwischen dem Oströmischen Reiche und den italienischen Städten Genua, Pisa und Venedig" in *Archiv für*

	Diplomatik, Schriftgeschichte Siegel- und Wappenkunde 3 (1957), Köln, pp. 79-161
Heinemeyer, *Studien*	W. Heinemeyer, "Studien zur Diplomatik mittelalterlicher Verträge vornehmlich des 13. Jahrhunderts" in *Archiv für Urkundenforschung*, vol. 14 (1936), pp. 321-413
Heller, *Venedig*	K. Heller, *Venedig: Recht, Kultur und Leben in der Republiek, 697-1797*, Böhlau 1999
Hendy, *Studies*	M. Hendy, *Studies in the Byzantine Monetary Economy, c. 300-1450*, Cambridge 1985
Hendrickx, *Thesmoi*	B. Hendrickx, *Οι πολιτικοί και στρατιωτικοί θεσμοί της Λατινικής Αυτοκρατορίας της Κωνσταντινουπόλεως*, (in Greek), 2nd edition, Athens 1999
Heumann and Seckel, *Handlexikon*	E. Seckel, *Heumanns Handlexikon zu den Quellen des römischen Rechts*, 9th edition, Jena 1914
History of the Greek Nation	*History of the Greek Nation*, Ekdotike Athenon (in Greek), vol. 9, Athens 1980
Huber, *Jurisprudence*	U. Huber, *The Jurisprudence of my time*, translated by P. Gane, vols. 2, Durban Butterworth etc. 1939
Jacoby, *Studies*	D. Jacoby, *Studies on the Crusader States and on Venetian expansion* (Variorum) Northampton 1989
Jacoby, *Italian privileges and trade*	D. Jacoby, "Italian privileges and trade in Byzantium before the fourth Crusade: a reconsideration" in *Annuario de estudios Medievales 24* (1994), pp. 349-68
Jacoby, *The Byzantine Outsider*	D. Jacoby, "The Byzantine Outside in Trade (c. 900-c.1350)" in *Strangers to themselves: The Byzantine Outsider* (ed. D. Smythe), 1998, pp. 129-147
Jacoby, *Conrad*	D. Jacoby, "Conrad, Marquis of Montferrat and the Kingdom of Jerusalem (1187-1192)" in *Atti del Congresso Internazionale 'dai Feudi Montferrini e dal Piemonte ai Nuovi Mondi oltre gli Oceani*, (ed. L. Balleto), Alessandria 1993, pp. 187-238; repr. in *Trade, Commodities and Shipping in the Medieval Mediterranean*, Variorum 1997, (IV).
Jacoby, *The Venetian privileges*	D. Jacoby, "The Venetian privileges in the Latin Kingdom of Jerusalem: Twelfth and Thirteenth-Century Interpretations and Implementation" in

	Montjoie, Studies in honour of Hans Eberhard Mayer, (ed. Kedar, Riley-Smith and Hiestand), Variorum 1997, pp. 155- 175
Jacoby, *The chrysobull*	D. Jacoby, "The chrysobull of Alexius I Comnenus to the Venetians: the Date and the Debate" in *Journal of Medieval History 28* (2002), pp. 199-204.
Jacoby, *Foreigners*	D. Jacoby, "Foreigners and the Urban Economy in Thessalonike, ca. 1150-ca.1450", in: *DOP* 57 (2003), pp. 85-132
Janin, *Géographie*	R. Janin, *La Géographie Eccléssiastique de l'empire Byzantin, premiére partie, Le siege de Constantinople et le Patriarcat Oecuménique,* Tome III. Les églises et les monastères, Paris 1969
Janin, *Les sanctuaires*	R. Janin, "Les sanctuaires des colonies latines à Constantinople" in *Revue des Études Byzantines*, vol. IV (1946), pp. 163-77
Kaser, *Zivilprozessrecht*	M. Kaser, *Das Römische Zivilprozessrecht*, München 1996
Kaser, *Römisches Privatrecht*	M. Kaser, Das Römische Privatrecht, zweiter Abschnitt, München 1975
Kazhdan, *Do we need*	A. Kazhdan, "Do we need a new history of Byzantine Law?" in *Jahrbuch des Österreichischen Byzantinistik* 39 (1989), pp. 1-28
Kazhdan, *State*	A. Kazhdan, "State, feudal, and private economy in Byzantium" in *DOP* 47 (1993), pp. 1-67
Kedar, *Origins*	B. Z. Kedar, "On the Origins of the Earliest Laws of Frankish Jerusalem: The Canons of the Council of Nablus, 1120" in *Speculum*, Vol. 74. no 2 (1999), pp. 310-335
Koder, *Sigilion*	J. Koder, "Das Sigilion von 992 – eine "aussenpolitische" Urkunde?" in *Byzantinoslavica* 52 (1991), pp. 40-44
Koeppler, *Barbarossa*	H. Koeppler, "Frederick Barbarossa and the Schools of Bologna" in *The English Historical Review*, vol. 54 (1939), pp. 577-607
Koschaker, *Europa*	P. Koschaker, *Europa und das Römische Recht*, 1947 (reprinted 1966) München Beck
Koukoules, *Byzantinon Bios*	Κουκουλέ Φ., *Βυζαντινῶν βίος καὶ πολιτισμός*, vol. III, Ἀθῆναι 1949 (in Greek)

Kretschmayr, *Geschichte*	H. Kretschmayr, *Geschichte von Venedig*, (in 3 Bänden), Band 1, 1905 (repr. Scientia Verlag Aalen 1986)
Kriaras, *Lexicon*	Ε. Κριαρά, *Λεξικό της Μεσαιωνικής Ελληνικής Δημώδους γραμματείας, 1100-1669*, Thessaloniki 1968-2011 (in Greek)
Laiou, *The emperor's word*	A. E. Laiou, "The emperor's word: chrysobulls, oaths and synallagmatic relations in Byzantium (11th -12th centuries)" in *Mélanges Gilbert Dagron*, 2002, pp. 347-362
Laiou, *Byzantine Trade*	A. E. Laiou, "Byzantine trade" in *The Crusades from the perspective of Byzantium and the Muslim world*, (ed. A. Laiou and R.P. Mottahedeh) Dumbarton Oaks Washington D.C. 2001, pp. 157-192
Laiou, *Institutional Mechanisms*	A. E. Laiou, "Institutional Mechanisms of Integration" in *Studies on the Internal Diaspora of the Byzantine Empire*, (ed. H. Ahrweiler and A. E. Laiou), 1998, pp. 161-181
Laiou, *Byzantine traders and seafarers*	A. E. Laiou, "Byzantine traders and seafarers" in *The Greeks and the Sea* (ed. Sp. Vryonis), New Rochelle 1993, pp. 79-96
Laiou, *The Foreigner*	A. E. Laiou, "The Foreigner and Stranger in 12th century Byzantium" in *Fremde der Gesellschaft* (ed. M. Th. Fögen), 1991, pp. 89-91
Lane, *Venice*	F. Lane, *Venice, a maritime Republic*, Baltimore and London, 1973
Leicht, *Storia*	P.S. Leicht, *Storia del diritto Italiano*, 1956
Letsios, *Das Seegesetz*	D. Letsios, *Νόμος Ῥοδίων Ναυτικός, Das Seegesetz der Rhodier*, Rhodes 1996
Lewis and Short, *Dictionary*	C.T .Lewis and C. Short, *A Latin Dictionary*, Oxford 1879 (repr. 1987)
Lexikon des Mittelalters	*Lexikon des Mittelalters*, 9 vols., München 2003
Liddel and Scott, *Lexicon*	H.G. Liddell and R. Scott, *A Greek-English Lexicon*, Oxford, 1940
Lilie, *Byzantium and Crusader States*	R.-J. Lilie, *Byzantium and the Crusader states 1096-1204*, (transl. By J.C. Morris and J.E. Ridings), Oxford 1993
Lilie, *Handel und Politik*	R.-J. Lilie, *Handel und Politik zwischen dem byzantinischen Reich und den italienischen*

	Kommunen Venedig, Pisa und Genua in der Epoche der Komnenen und der Angeloi (1081-1204), Amsterdam 1984
Lokin and Zwalve, *Hoofdstukken*	J.H.A. Lokin and W.J. Zwalve, *Hoofdstukken uit de Europese Codificatiegeschiedenis*, Kluwer 2001
Macrides, *Justice*	R.J. Macrides, "Justice under Manuel I Komnenos", in *Fontes Minores VI*, (ed. D. Simon), Frankfurt am Main1984, pp. 99-204; also printed in R, Macrides, *Kinship and justice in Byzantium, 11th-15th centuries*, Variorum, 1999
Macrides, *Competent court*	R.J. Macrides, "The Competent Court" in *Law and Society in Byzantium: Ninth-Twelfth Centuries*, (eds A. Laiou and D. Simon), Washington D. C. 1994, pp. 117-129
Madden, *The chrysobull*	Th. Madden, "The chrysobull of Alexius I Comnenus to the Venetians: the date and the debate" in *Journal of Medieval History 28* (2002), p. 23-41
Magdalino, *Maritime*	P. Magdalino, "The maritime neigborhoods of Constantinople: Commercial and Residential Functions, Sixth to Twelfth centuries" in *DOP*, vol. 54 (2000), pp. 209-226
Magdalino, *Constantinople*	P. Magdalino, *Constantinople Médiévale, Études sur l' évolution des structures urbaines*, 1996
Magdalino, *Manuel I Komnenos*	P. Magdalino, *The empire of Manuel I Komnenos*, 1143-1180, 1993
Malingoudi, *Der rechtshistorische*	J. Malingoudi, "Der rechtshistorische Hintergrund einiger Verordnungen aus den russisch-byzantinischen Verträgen des 10. Jhds" in *Byzantion* 59 (1998), pp. 52-64.
Malingoudi, *Verträge*	J. Malingoudi, "Die russisch-byzantinischen Verträge des 10. Jhds. aus rechtshistorischer Sicht" in *Byzantinoslavica* 58 (1997), pp. 233-250
Maltezou, *Les Italiens*	Chr. Maltezou, "Les Italiens propriétaires "terrarum et casarum" à Byzance" in *Byz. Forsch.* 22 (1996), pp. 177-191
Maltezou, *Venetian habitatores*	Chr. Maltezou, "Venetian *habitatores*, *burgenses* and merchants in Constantinople and its hinterland (twelfth-thirteenth centuries)" in *Constantinople and its hinterland: Papers from the Twenty-Seventh Spring Symposium of Byzantine Studies*,

	Oxford, April 1993 (eds. C. A. Mango and G. Dagron), 1995, pp. 233-241
Maltezou, *Il Quartiere*	Chr. Maltezou, "Il Quartiere Veneziano di Constantinopoli" in *Thesaurismata* 15 (1978), pp. 30-61
Maltezou, *Bailos*	Χρ. Μαλτέζου, *Ὁ θεσμὸς τοῦ ἐν Κωνσταντινουπόλει Βενετοῦ βαΐλου*, (PhD), Ἀθῆναι, 1970 (in Greek)
Mango, *Byzantium,*	C.A. Mango, *Byzantium, The Empire of New Rome*, London 1980
Martin, *Chrysobull*	M.E. Martin, "The chrysobull of Alexius I Comnenus to the Venetians and the early Venetian Quarter in Constantinople", *Byzantinoslavica* 29 (1978), pp. 19-23
Medieval Latin Dictionary	J. Niermeyer and C. van de Kieft, *Mediae Latinitatis Lexicon Minus, Medieval Latin Dictionary*, (revised by J.W.J. Burgers), Leiden 2002
Miller, *Logothetes*	D.A. Miller, "The Logothetes of the Drome in the Middle Byzantine Period" in *Byzantion* 36 (1966), pp. 438-470
Morisson, *Byzantine money*	C. Morisson, "Byzantine Money: Its Production and Circulation" in EHB, vol. 3, pp. 909-966
Mousourakis, *Roman law*	G. Mousourakis, *The Historical and Institutional Context of Roman Law*, Ashgate 2003
Müller, *Documents, Imperial*	A. Müller "Documents, Imperial chrysobulls" in *The Oxford Handbook of Byzantine Studies*, (ed. E. Jeffreys, J. Haldon and R. Cormack), 2008, pp. 129-135.
Nader, *Burgess law*	M. Nader, *Burgesses amd Burgess law in the Latin Kingdoms of Jerusalem and Cyprus (1099-1325*), Ashgate Publishing Limited 2006
Neumann, *Quellen*	Neumann "Über die urkundlichen Quellen zur Geschichte der byzantinisch-venetianischen Beziehungen vornehmlich im Zeitalter der Komnenen" in *BZ* 1 (1892), pp. 366-378
Nicholas, *Roman Law*	B. Nicholas, *An Introduction to Roman law*, Oxford 1975
Nicol, *Byzantium and Venice*	D. Nicol, *Byzantium and Venice, a study in diplomatic and cultural relations*, Cambridge 1988

Medieval Latin Dictionary	Medieval Latin Dictionary (ed. J.F. Niermeyer C. Van De Kieft, revised by J. W.J.Burgers), Leiden 2002
Norwich, *Venice*	J. J. Norwich J.J., *A history of Venice*, Penguin Books Limited edition 2003
Oikonomides, *Byzantine State*	N. Oikonomides, "The Role of the Byzantine State in the Economy" in *EHB*, vol. 3, pp. 973-1058
Ostrogorsky, *History*	Ostrogorsky, *History of the Byzantine State*, Rutgers University Press 1969
ODB	*The Oxford Dictionary of Byzantium*, 3 vols., (editor-in-chief A.P. Kazhdan), Oxford University Press 1991
Papadatou, *Sumvivastiki epilusi*	Δ. Παπαδάτου, *Η συμβιβαστική επίλυση ιδιωτικών διαφορών κατά τη μέση και ύστερη βυζαντινή εποχή*, (PhD), Εκδ. Αντ. Ν. Σάκκουλα Αθήνα-Κομοτηνή 1995 (in Greek)
Papadatou, *Philotimiai*	Δ. Παπαδάτου, *Φιλοτιμίαι 'επιτελεύτιοι και η περιουσιακή θέση του επιζώντος συζύγου στο βυζαντινό δίκαιο*, University Studio Press Θεσσαλονίκη 2008, (in Greek)
Papagianni, *Protimesis*	"*Protimesis* Preemption in Byzantium" in *EHB*, vol. 3, pp. 1071-1082
Papagianni, *Nomologia*	Ελ. Παπαγιάννη, *Ἡ Νομολογία τῶν ἐκκλησιαστικῶν δικαστηρίων τῆς βυζαντινῆς καὶ μεταβυζαντινῆς περιόδου σέ θέματα περιουσιακοῦ δικαίου, I - Ἐνοχικό - Ἐμπράγματο δίκαιο*, Εκδ. Αντ. Ν. Σάκκουλα Ἀθήνα 1992 (in Greek)
Paradisi, *Storia*	Br. Paradisi, *Storia del diritto internazionale nel medio evo*, Napoli 1956
Penna, *Venetian judges*	D. Penna, "Venetian judges and their jurisdiction in Constantinople in the 12th century. Some observations based on information drawn from the chrysobull of Alexios III Angelos to Venice in 1198" in *SG* VIII, Groningen 2009, pp. 135-146
Penna, *Legal Autonomy*	D. Penna, "Legal Autonomy of Latin Christians in the Byzantine Empire" in *Kanon* XXI, Yearbook of the Society for the Law of the Eastern Churches, Edition Roman Kovaer · Hennef 2010, pp. 70-81
Pertusi, *Venezia e Bisanzio: 1000-1204*	A. Pertusi, "Venezia e Bisanzio: 1000-1204" in *DOP* (33) 1979, pp. 1-22, repr. in: A. Pertusi, *Saggi Veneto-Bizantini*, (a cura di G. B. Parente G.B.),

	Florenz 1990, pp. 109-138. I have used the reprinted edition.
Petropoulos, *Romaikon Dikaion*	Γ. Πετροπούλου, *Ῥωμαϊκὸν Δίκαιον*, Ἀθῆναι 1943 (in Greek)
Prawer, *Crusader*	J. Prawer, *Crusader Institutions*, Oxford University Press 1980
Prutscher, *Der Eid*	U. Prutscher, *Der Eid in Verfassung und Politik Italienischer Städte*, (PhD), Gießen 1980
Reinsch, *Über das Hypobolon*	D.R. Reinsch, "Eustathios Rhomaios' Opusculum über das Hypobolon" in FM 7, 239-252
Queller, *Ambassador*	D. Queller, *The Office of the Ambassador in the Middle Ages*, New Jersey 1967
Rashdall, *Universities*	H. Rashdall, *The Universities of Europe in the Middle Ages*, 3 vols. Oxford Clarendon Press 1895 (repr. 1964)
Rodolakis, *Apo to nomo Rhodion*	Ροδολάκη, *Από το νόμο Ροδίων στο 53ο βιβλίο των Βασιλικων*, (in Greek), Athens 2007
Rösch, *Venedig und das Reich*	G. Rösch, *Venedig und das Reich*, Tübingen 1982
Rossetti, *Pisa*	G. Rossetti, "Pisa e l'impero tra XI e XII secolo. Per una nuova editione del diploma de Enrico IV ai Pisani", in *Nobiltà e chiesa nel Medioevo e altri saggi. Scritti in onore di G.G. Tellenbach*, (a curia di C. Violante), Roma 1993
Runciman, *Economic History*	St. Runciman, *The Cambridge Economic History of Europe, vol. II, Trade and Industry in the Middle Ages,* Cambridge 1987
Salvatori, *Pisa*	E. Salvatori, "Pisa in the Middle Ages: the dream and the reality of an empire" in *Empires and States in European Perspective*, Pisa 2002, pp. 13-32
Sarti, *Giuramento*	N. Sarti, *Maximum dirimendarum causarum remedium, Il giuramento di calunnia nella dottrina civilistica dei secoli XI-XIII*, Milano 1995
Savigny, *Geschichte*	F. C. von Savigny, *Geschichte des Römischen Rechts im Mittelalter*, Heidelberg 1834-1851, 7 vols. (repr. Bad Homburg 1961), which has been also translated into English by Cathcart, The History of Roman law in the Middle Ages, Edinburgh 1829
Schilbach, *Byzantinische Metrologie*	E. Schilbach, *Byzantinische Metrologie*, München 1970

Schminck, *Einzelgesetzgebung*	A. Schminck, "Zur Einzelgesetzgebung der „makedonischen" Kaiser" in *FM*, XI, 2005, pp. 269-323
Schreiner, *Niederlassungen*	Schreiner P., "Untersuchungen zu den Niederlassungen Westlichen Kaufleute im Byzantinischen Reich des 11. und 12. Jahrhunderts" in *Byz. Forsch.* 7 (1979), pp. 175-191
Simon, *Zivilprozess*	D. Simon, *Untersuchungen zum Justinianischen Zivilprozess,* München 1969
Smyrlis, *Private property*	K. Smyrlis, "Private property and state finances. The emperor's right to donate his subjects' land in the Comnenian period" in *Byzantine and Modern Greek Studies*, vol. 33 no 2 (2009), pp. 115-132
Sophocles, *Greek Lexicon*	E. A. Sophocles, *Greek Lexicon of the Roman and Byzantine Periods*, Cambridge 1914
Sorlin, *Les traités*	I. Sorlin, "Les traités de Byzance avec la Russie au Xe siècle" (I) in *Cahiers du monde Russe et soviétique* (1961), pp. 313-360
Starr, *The Jews*	J. Starr, *The Jews in the Byzantine Empire (641-1204)*, [Texte und Forschungen zur byz.-neugr. Philologie, 30], Athens 1939
Stein, *Roman Law*	Stein P., *Roman Law in European History*, Cambridge 1999
Stolte, *Byzantine Law*	Stolte B., "Is Byzantine law Roman law?" in *Acta Byzantina Fennica*, 2005, vol. 2, pp. 111-126
Storti Storchi, *Constituti*	Cl. Storti Storchi, *Intorno at Constituti Pisani della legge e dell' uso* (secolo XII), Napoli Liguori 1998
Svoronos, *Le serment*	N. Svoronos, "Le serment de fidélité à l' empereur byzantin et sa signification constitutionnelle" in *Revue des Etudes byzantines, IX* (1951), pp. 106-142, Paris 1952; also in Variorum Reprints, 1973, VI.
Thiriet, *La Romanie*	F. Thiriet, *La Romanie vénitienne au moyen âge, (XIIe-XVe siècles),* 1959 and new edition in 1975 with supplementary bibliography
De Bie Leuveling Tjeenk, *Gerechtigden*	J. De Bie Leuveling Tjeenk, *Gerechtigden tot schadevergoeding bij zaakschade*, (PhD) Deventer Kluwer 1997
Trapp. *Lexikon*	E. Trapp (ed.), *Lexikon zur Byzantinischen Gräzität*, 1. vol., Vienna 2001

Troianos, *Piges*	Σπ. Τρωιάνου, *Οι πηγές του Βυζαντινού δικαίου*, Αθήνα - Κομοτηνή 2011, 3rd edition (in Greek)
Troianos, *Neares*	Σπ. Τρωιάνου, *Οι νεαρές του Λέοντος ΣΤ' του Σοφού,* Ηρόδοτος Αθήνα 2007 (in Greek)
Troianos, *Nauagia*	Σπ. Τρωιάνου "Τα ναυάγια, η νεαρά 64 Λέοντος του Σοφού και το κείμενο των Βασιλικών" in *Πειραϊκή Νομολογία 14* (1992), p. 488-495. This article is also published in Troianos, *Neares*, pp. 515-526 (in Greek)
Troianos, *Ekklisiastiki*	Σπ. Τρωιάνου, *Ἡ ἐκκλησιαστική διαδικασία μεταξύ 565 καὶ 1204*, Ἀθῆναι 1969 (in Greek)
Tuiler, *La date*	A. Tuiler, "La date exacte du chrysobule d'Alexis 1er Comnène en faveur des Vénitiens et son contexte historique", *Riv. Di studi Biz. E Neoell., n.s. IV* (1967), pp. 27-48
Tůma, *Imperial chrysobull*	O. Tůma, "The imperial chrysobull to the Venetians of 992" in *Byzantion 54* (1984), pp. 358-66
Tůma, *The dating*	O. Tůma, "The dating of Alexius' Chrysobull to the Venetians: 1082, 1084 or 1092?" *Byzantinoslavica*, *XLII* (1981), pp. 171-185
Ullmann, *Law*	W. Ullman, *Law and Politic in the Middle Ages: An introduction to the Sources of Medieval Political Ideas*, Ithaca, New York, Cornell University Press 1975
Van der Ven, *Academierechtspraak*	F. Van der Ven, "Enige Opmerkingen over de academierechtspraak te Groningen" in *Groninger Opmerkingen en Mededelingen*, Groningen 1995, pp. 70-115
Von Falkenhausen, *Untersuchungen*	V. von Falkenhausen, *Untersuchungen über die byzantinische Herrschaft in Süditalien vom 9. bis ins 11. Jahrhundert*, Wiesbaden 1967
Waley, *Italian*	D. Waley, *The Italian city-republics*, London 1988
Watson, *Mandate*	A. Watson, *Contract of mandate in Roman law*, Oxford 1961
Wetzell, *System*	G. W. Wetzell, *System des ordentlichen Zivilprozesses*, 1878 Leipzig (repr. Scientia Aalen 1969)

Zachariä, *Geschichte*	K.E. Zachariä von Lingethal, *Geschichte des Griechisch-Römischen Rechts*, 1864 (repr. Scientia Aalen 1955)
Zepos, *Paradosis*	P. Zepos, "Ἡ παράδοσις δι' ἐγγράφου ἐν τῷ Βυζαντινῷ καὶ τῷ μεταβυζαντινῷ δικαίῳ" in *Τόμος Κωνσταντίνου Ἀρμενοπούλου*, Thessalonica 1952, pp. 199-242 (in Greek)
Zimmermann, *Obligations*	R. Zimmermann, *The Law of Obligations, Roman Foundations of the civilian tradition*, Oxford 1996
Zwalve, *Hoofdstukken*	W. Zwalve, *Hoofdstukken uit de geschiedenis van het Europese Privaatrecht, I, Inleiding en zakenrecht*, Den Hague 2006

INDICES

I. Selected Legal Terms[1339]

Greek

[1339] Terms that are not strictly legal but associated with legal issues have also been included.

Latin

II. Sources

1. Legal Sources

Corpus iuris civilis

Codex

Digest

Novels

2. Collections and Editions of Documents

3. Historical Sources

III. Names[1340]

[1340] References to names and titles are in accordance with the entries used in the *Oxford Dictionary of Byzantium*.